United States Court of Appeals

for the Second Circuit

APPENDIX

74-1658

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By mail

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

LAWRENCE RALPH and DIVERS OTHERS,
Plaintiffs-Appellants,

vs.

THE BETHLEHEM STEEL CORPORATION and THE UNITED STEELWORKERS OF AMERICA,
Defendants-Appellees.

APPENDIX

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

WILLIAM D. SCOTT,
Attorney for Plaintiffs-Appellants,
605 Brisbane Building,
Buffalo, New York 14203,
Phone: 716-854-8850.

BATAVIA TIMES, APPELLATE COURT PRINT
A. GERALD KLEPS, REPRESENTATIVE
BATAVIA, N. Y. 14020
716-343-0457

UNITED STATES COURT OF APPEALS
FILED
AUG 5 1974
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

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11,892 Lawrence Ralph, etc. v. The Bethlehem Steel Corp. & 1

DATE 1966		PROCEEDINGS	Date Order Judgment N
June 29		Filed complaint	
29		Issued summons & 2 copies	
29		JS 5 made	
July 6		Filed summons-served 7/1/66	
Aug. 4	"	Pltf's. Request for Admissions from Deft. Bethlehem Steel Corp.	
8	"	Answer of Deft. Bethlehem Steel Corp.	
8	"	Answer of Deft. United Steelworkers of America	
9	"	Marshal's return of service of Request for Admissions-served Beth. 8/8/66	
9	"	Stipulation that Deft. Bethlehem Steel Corp. may have until 10/31/66 to file amended answer	
18	"	Deft. Bethlehem Steel Corp.'s Response to Request for Admissions	
Oct. 10	"	Pltfs' Written Interrogatories	
10	"	Deft's, Bethlehem Steel Corp., Interrogatories	
20	"	Pltfs' Answers to Written Interrogatories	
20	"	Pltfs' Notice of Motion on Objections to Written Interrogatories-ret. 10/31/66-dec.res.	
20	"	Pltfs' Notice of Motion to Amend Complaint-ret. 10/31/66-granted	
20	"	List of Plaintiffs	
26	"	Order to Show Cause why an order should not be made compelling the Deft., Bethlehem Steel Corp., to answer interrogatories, etc.-Henderson, J. ret. 10/31/66-dec.res. (notice to Messrs. Russ and Borowiec)	F-61
28	"	Deft's, Bethlehem Steel, Affidavit in Opposition to Pltfs' Order to Show Cause	
28	"	Deft's, Bethlehem Steel, Affidavit in Opposition to Pltfs' Objections to Interrogatories	
Nov. 17	"	Pltfs' Formal List of 471 Plaintiffs	
17	"	Order permitting pltfs. to amend their complaint, etc.-Henderson, J. (notice & copy to Messrs. Russ & Borowiec)	F-62
17	"	Amended Complaint	
28	"	Deft's, Bethlehem Steel Corp., Answer to Amended Complaint	
28	"	Deft's, United Steelworkers of America, Amended Answer	
Dec. 8	"	Deft's, Bethlehem, Amended Answer to Amended Complaint	
8	"	Deft's, Bethlehem, Answer to Written Interrogatories	
8	"	Deft's, Bethlehem, Notice of Hearing on Objections to Written Interrogatories-ret. 1/9/67-dec.res.	
13	"	Pltfs' Affidavit	
1967			
Mar. 10	"	Pltfs' Notice of Motion for an order granting a jury trial-ret. 3/20/67, adj. 4/24/67, 5/1/67-dec.res.	
14	"	Deft's, Bethlehem Steel Corp., Notice & Affidavit and Motion for an order directing that the issues and causes of actions against defts. be set forth in the amended complaint be tried separately, etc.-ret. 3/20/67, adj. 4/24/67, 5/1/67-dec.res.	
Apr. 20	"	Deft's, Bethlehem Steel Corp., Affidavit in Opposition to Pltfs' Motion for Trial by Jury	
May 3	"	Testimony	
June 2	"	Pltfs' Notice of Motion for an order directing Deft., United Steelworkers of America to produce certain documents, etc.-ret. 6/26/67	
30	"	Order granting pltfs' motion for an order directing deft., United Steelworkers of America to produce and permit pltfs. to inspect certain documents, etc.-Henderson, J. (notice & copy to Mr. Borowiec)	F-69

FPI-LK-8-81-44-84M-6768

Docket Entries.

. 11,892 Lawrence Ralph & Divers Others v. The Bethlehem Steel Corp. & 1 (

D. C. 110 Rev. Civil Docket Continuation

DATE 1968	PROCEEDINGS	Date Order Judgment N
Jan. 22	Hearing on motions for production of documents and discovery-Order to be submitted.	
29	Filed Order re production of correspondence, etc.-Curtin, J. (notice to Mr. Borowiec)	
Feb. 19	Hearing on motion for production of documents & discovery-to be continued 2/26/68	
26	Filed Court Reporter's Transcript of Proceedings held 2/19/68	
Mar. 1	Hearing on motion for production of documents & discovery hearing continued from 2/19/68	
6	Filed Court Reporter's Transcript of proceedings held 3/1/68	
26	" Pltfs' Supplemental Interrogatories	
Apr. 24	" Pltfs' Affidavit in Opposition to Deft's. Motion for Severance	
July 16	" Order that the deft. show cause why an order should not be made compelling deft. to answer interrogatories, etc.-Curtin, J. ret. 7/22/68-court directs both parties to file answers to interrogatories and amended interrogatories by 9/16/68. Pltf's. atty. is directed to draw up proposed order for submission to the court.	F-82
31	" Order re interrogatories-Curtin, J. (notice & copy to Mr. Schroeder)	
Sep. 16	" Deft's, Bethlehem Steel Corp., Answers to Interrogatories	F-82
17	" Pltf's. Answer to Interrogatories	
Dec. 6	Pretrial Conference	
1969		
Jan. 31	Pretrial Report (JTC)	
Apr. 2	Filed Transcript of Proceedings held 3/3/69	
Mar. 27	Pretrial Report (JTC)	
Apr. 22	Pretrial Report (JTC)	
30	Filed Pltf's. Notice to Take Depositions	
June 25	" Pltf's. Notice to Take Depositions	
July 1	" Pltfs'. Notice to Take Depositions	
1	" Pltfs'. Notice of Motion for an Order directing deft., Bethlehem Steel Corp., to product & permit pltfs. to inspect certain documents-ret. 7/16/69	
June 27	Pretrial Conference (JTC)	
July 18	Filed Pltfs' Notice of Motion & Affidavit for an order directing Deft. Bethlehem Steel Corp., to produce for inspection certain documents-ret. 7/23/69 8/6-Court directs deft. make available certai	
Aug. 5	" Pltfs' Notice to Take Depositions records for purposes of making photocopies	
6	" Deposition of Robert B. Law (notice to attys)	
7	" Deft's, Bethlehem Steel, Answering Affidavit	
Sept. 3	" Order granting pltfs' motions for an order directing deft., Bethlehem Steel Corp., to produce and to permit the pltfs. to inspect and copy certain documents-Curtin, J. (notice & copy to Messrs. Russ and Gottesman)	F-96
1970		
Jan. 15	" Decision & Order re pltfs' motion for an order directing the deft., Bethlehem Steel Corp., to produce for inspection and copying certain documents-Curtin, J. (notice & copy to Messrs. Scott, Russ and Krug)	F-10
15	" Letter dated 11/14/69 from counsel for Bethlehem Steel to the court	
15	" Letter of 11/17/69 from counsel for pltfs. to the court	
15	" Letter dated 11/18/69 from the court to all counsel	
15	" Letter of 11/26/69 from counsel for Bethlehem Steel to the court	

Docket Entries.

DATE 1970	PROCEEDINGS	Date Ord. Judgment
Jan. 15	Filed Court Exhibit 1	
15	" Court Exhibit 2	
15	" Court Exhibit 3	
30	" Pltfs' Notice of Motion for an order directing deft, United Steelworkers of America to produce and to permit inspection, etc.-ret, 2/11/70, 3/4-dec.res.	
May 22	Motion by pltf. for order requiring deft. to produce certain documents-granted	
July 2	Filed Order granting pltfs' motion re deft's, United Steelworkers of America, production of documents, etc.-Curtin, J. (notice & copy to Messrs. Russ and Krug)	F-10
1971		
Jan. 21	" Pltfs'. Affidavit & Notice of Motion for an order granting Pltfs. a jury trial-ret.1/29/71 - 2/5/71 adj.2/26/71	
Feb. 26	" Deft.,Union, Opposition to Pltfs'. Renewed Motion for Jury Trial	
26	Motion by Pltf.for jury trial. Motion held in abeyance. Case pre-tried. A deposition is to be taken. A pretrial report to be made 4/30/71. At that time Deft.Union may make motion for summary judgment.	
June 17	Filed Deposition of Ben Fischer (notice to attys.)	
25	Pretrial Conference (JTC)	
July 15	Filed Deposition of Arthur Jardin (notice to attys.)	
Oct. 29	Pretrial Conference (JTC)	
Nov. 2	Filed Order setting dates for completion of discovery and filing of motions,etc.-Curtin, J (notice & copy to Messrs. Scott, Dickinson, Gottesman & Krug)	F-122
1972		
Nov. 16	Filed Defendant's Notice of Motion and Affidavits in support of Summary Judgment.	
Dec. 5	" Decision & Order that pltfs. ans. afdvts. & briefs on defts. motion for summary judgment be filed by 1/17/73. Curtin DJ Notice & copies to Messrs.Scott, Russ, Krug & Gottesman	F-135
1973		
Jan. 31	" Transcript of proceedings held at Bethlehem Steel on 3/3/69-	
31	" Transcript of examination before trial of Robert B. Law on 6/19/69	
31	" Transcript of examination before trial of James H. Woodhouse on 7/28/70	
31	" Deposition of Ben Fischer taken 4/20/71	
31	" Transcript of Examination before trial of Irving Trost taken 12/29/71	
31	" Affidavit of Pltf, in opposition to motion of both defts. for Order for Summary Judgment	
Mar. 16	" Decision & Order that Court will accept brief filed on or about 3/8/73; directs that answers in form of affidavits or brief be filed by parties to various questions & that filing shall be completed not later than 4/3/73 & court will hear oral argument on 4/6/73 at 11AM Curtin DJ Notice & Copies Messrs. Scott, McRuss; Krug & Gottesman	F-138
Apr. 6	Motions by defts for summary judgment-submitted	
1974		
Jan. 3	Filed order directing Clerk to enter judgment in behalf of both defts. dismissing pltfs. complaint without costs-Curtin, DJ Notice & copies to Messrs.Scott, Dickinson, Hall, Cohen, Gottesman & Krug	F-148

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110 Rev. Civil Docket Continuation

ATE 974	PROCEEDINGS	Date Order or Judgment Noted
n. 3	Filed judgement in behalf of defts. & dismissing pltfs. complaint w/o costs-Clerk	F-148
3	JS 6 made	
3	Filed Pretrial confernece notice to be on 12-6-68	
3	" Pretrial conference notice to be on 1-24-69	
3	" pretrial conference notice to be on 2-21-69	
3	" Affidavit of Donald W. Cummings (received on 4-3-73)	
3	" supplemental affidavit of Rae Williamson(received 4-3-73)	
3	" Deft. Steelworkers' motion for summary judgment.	
3	" Deft. Bethleham Steel Corp. answers to interrogatories propounded by the Ct. (received 4-3-73)	
3	" affidavit of Irving C. Trost in support of Steelworkers; Motion for summary judgement	
3	" supplemental affidavit of Irving C. Trost in support of Deft. Steelworkers' motion for summary judgment(received 4-3-73)	
3	" affidavit of Wm. J. Theis in support of Deft. Steelworkers' motion for summary judgment (received about July, 1972)	
28	" Pltf's. Answers to Court Interrogatories	
Fee.	Pltf's. Notice of Appeal (copy) filed to Messrs. Russ and Krug and to Clerk, CCA with copy of docket entries)	
. 26	" Stipulation and Order extending time to transmit the record on appeal to 4/29/74-Curtin, DJ (notice to Messrs. Russ and Krug)	
Apl. 15	" Court Reporter's transcript of proceedings on 4/6/73	F-149
. 15	" Deposition of David G. Rosser	
r. 15	" Agreement between Bethlehem Steel Co., et al. and United Steelworkers of America dated 8/3/56	
r. 15	" Agreement between Bethlehem Steel Co. and United Steelworkers of America dated 1/4/60	
. 29	Original papers, docket entries and Clerk's certificate mailed to Clerk, CCA	

CLOSED

Decision and Order Dated January 3, 1974.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

LAWRENCE RALPH and DIVERS OTHERS,

Plaintiffs,

vs. Civil 11,392

THE BETHLEHEM STEEL CORPORATION and
THE UNITED STEELWORKERS OF AMERICA,

Defendants.

APPEARANCES: William D. Scott, Esq., Buffalo, New York, for Plaintiffs.

Hodgson, Russ, Andrews, Woods & Goodyear (John E. Dickinson, Esq. & David E. Hall, Esq., of Counsel), Buffalo, New York, for Defendant Bethlehem Steel Corporation.

Bredhoff, Barr, Gottesman, Cohen & Peer (George H. Cohen, Esq. & Michael H. Gottesman, Esq., of Counsel) Washington, D. C., and

Thomas E. Krug, Esq., Buffalo, New York,

for Defendant United Steelworkers of America.

In this action, employees of Bethlehem Steel Corporation [Bethlehem] allege that Bethlehem violated the collective bargaining agreement between Bethlehem and the United Steelworkers of America [Steelworkers]

and that the Steelworkers, the collective bargaining representative of the plaintiffs, have unfairly represented the plaintiffs in the processing of certain grievances with Bethlehem. Specifically, the crux of the charge against the Steelworkers is that it breached its duty of fair representation by failing to process grievances B-3139 and B-3141 in behalf of the plaintiffs who were electrical and maintenance employees in the Strip Mill at Bethlehem's Lackawanna plant in a fair and proper manner. Bethlehem and the Steelworkers have each filed motions for summary judgment. In support of these motions, the defendants and the plaintiffs have filed affidavits and have called to the court's attention excerpts from depositions taken from various individuals familiar with the processing of these grievances. Upon an initial perusal of these papers, it appeared to the court that none of the essential facts was controverted but, in order to make certain that this was the case, by order of March 16, 1973 the court directed the parties to make a further filing of statements of position, answering

certain questions put to them in the order of March 16. The court has received and reviewed the answers to the questions and is satisfied that there is no controversy about any of the essential facts in this litigation. It appears that this is a case which may be decided on a motion for summary judgment.

Before discussing the particular grievances which are the principal subject matter of this litigation, a brief discussion of the collective bargaining agreement and the prior steps taken by the parties should be set forth. In 1956, Bethlehem and the Steelworkers entered into a supplementary agreement by which Bethlehem undertook to revise all of its existing incentive wage plans to express them in terms of standard hourly wage rates. This conversion involved complex computations and testing. The implementation of the plan in each department consumed many hours and extended over a period of many months. The conversion which started in the mid 1950's continued throughout the 1960's. A revised plan was put into effect in the Strip Mill of the Lackawanna plant during the years 1959-1960. In April 1960, Bethlehem established

indirect incentive plans for the maintenance employees in the Strip Mill. Plaintiffs are indirect employees paid under these plans. The incentive compensation paid indirect employees is determined by a complex formula involving the weight of performance of direct units and an incentive adjustment established during the representative test period. "Direct" is defined in the agreement as "jobs which directly affect the rate of output and where the output may be measured economically and with reasonable accuracy." "Indirect" is defined as "jobs which do not directly affect the rate of output or where output cannot be measured economically and with reasonable accuracy." The agreement defines the "representative test period" as "in the absence of special circumstances, the period of three months next preceding the date on which an existing plan shall be replaced by a new incentive plan in accordance with the provisions of this Section."

As the direct and indirect plans were implemented, the Steelworkers filed various grievances, charging that in one respect or another the plan did not conform

to the collective bargaining agreement. The grievances were processed. Some went to arbitration and some were resolved short of arbitration by a joint incentive committee which was a specialized body established by the parties to the contract to resolve technical and complex incentive issues. Some of the grievances resulted in adjustments to direct incentive plans with consequent adjustment in the pay of direct workers paid under these plans. Following the adjustments in the direct plans, the indirect employees were entitled to an adjustment in their plans to reflect the changes in the direct plans. Because of the computations involved, it became necessary to make retroactive adjustments in the plans of indirect employees. Because the incentive compensation to be paid indirect employees was determined by reference to a number of direct units, it was necessary in some cases to hold in abeyance the grievances respecting the indirect employees until the computation could be made on the direct plans involved. The determination of retroactive payments due indirect workers had to be deferred until all of the direct plans had been finally adjusted, so that

data from the revised direct plans could be fed into the formula of the indirect plans.

The supplemental agreement introduced a new concept into the grievance arbitration procedure. This was the formation of the joint incentive committee, which was designed to review the incentive grievances which had not been disposed of in step 4 in the usual grievance procedure. This became known as the "4 1/2 step." The members of the joint incentive committee from Bethlehem and the Steelworkers were all experienced technicians from the national level. This procedure gave the International Union and Bethlehem an opportunity to examine the grievances filed at a local level and to select a few out of the many for arbitration which were representative of the questions presented throughout the industry. If this was not done, it was feared that the grievance procedure would become seriously overloaded and that conflicting decisions would be made in different areas and plants.

In the late 1950's after management began to establish the new incentive plans, the local unions filed

a large number of grievances. Many of these were processed through the early steps of the procedure and some submitted to the "4 1/2 step." After a decision was made at this step, some were submitted to arbitration in accordance with the supplemental agreement. About fifteen grievances covering the range of problems involved were submitted to arbitration and, on February 25, 1959, the umpire filed an award, in large part rejecting most of the arguments made by the Steelworkers. We may summarize as follows. The umpire rejected the Steelworkers' position that the incentive plans filed did not provide "equitable compensation" or an adequate rate of participation for "indirect workers." He rejected the position of the Steelworkers that the plans were partly based upon estimates of "maximum possible output" which were unfair and unrealistic.

With this background in mind, we turn to a discussion of the grievances B-3139 and B-3141. These grievances were filed on April 17, 1960 after management established a new incentive plan for the electrical and mechanical maintenance employees in the Strip Mill at the

Lackawanna plant. The step 3 meetings were conducted by union and management on November 28, 1960 and February 21, 1961. In these grievances, the union complained that the electrical and mechanical maintenance employees were direct rather than indirect workers and should be paid as such; it disagreed with the representative test period which the company had selected; it contended that the rates were unreasonable and unfair and it demanded retroactive pay. Bethlehem denied the grievances at the conclusion of the step 3 meetings. The grievances were processed to step 4 and ultimately to arbitration. On November 27, 1962, a hearing was held before the umpire. Before the meeting, the Steelworkers' representatives had concluded that,because the maintenance men involved in the grievances serviced and repaired equipment, they would not qualify as "direct" workers. As indirect workers, their incentives were based upon the performance of the direct workers in various operating units of the Strip Mill. Because the grievances challenging the new incentive rates in the operating units had not as yet been resolved, it appeared that the most practical approach was to send the

grievance back to step 3 to await the outcome of the operating unit grievance. When the Steelworkers' representatives came before the umpire on November 27, 1962, they advised him that there was no need for a full scale hearing and at that time reached the following understanding:

> The Union has agreed to withdraw the issue that mechanical and electrical maintenance jobs be designated as direct and the parties have agreed to remand these two grievances to Step No. 3 of the grievance procedure, pending the disposition of [incentive] rates cases involving the units which contribute the Electrical and Mechanical Incentive Plan.

The union would have preferred to avoid delay, because the retroactive pay could not be made to the indirect workers until the grievances were processed. Nevertheless, holding grievances B-3139 and B-3141 in abeyance did not produce any detrimental consequences for the plaintiffs because in October 1963 management expressly represented that if, as the result of the pending grievances with the direct employees, any adjustments were made in their incentives, then adjustments would apply to the electrical and mechanical maintenance employees. In addition, the Steelworkers decided to withdraw the claim that

the "representative test period" selected by management to establish the incentive plans for the electrical and maintenance workers failed to satisfy the standards of the agreement. This decision was made after the Steelworkers' representatives had carefully analyzed the various possible test periods involved and, in their judgment, other possible test periods would have been less favorable and there did not appear to be any that would be more favorable. (Affidavit of Irving Trost, ¶12.)

On June 3, 1964 the two grievances, B-3139 and B-3141, as amended by the stipulation of November 1962, went to the "4 1/2 step" before the joint incentive committee. At that time, after studying the files and the past history of the arbitration, the union representatives determined that there was no purpose served by submitting the cases to arbitration because there were no issues open. (Affidavit of William Theis, ¶¶ 14 and 15.) The representatives recognized that some of the issues urged in the grievances had already been decided by the umpire adverse to the union, that the union had withdrawn other issues by the stipulation of November 1962, and the company had

agreed that the indirect workers were entitled to retroactive pay, based upon any adjustments made in the pay to direct workers.

Although the union representatives [illegible]he "4 1/2 step" recognised that there were no remaining issues open for arbitration, nevertheless the workers involved in B-3139 and B-3141 urged that their cases be submitted to arbitration and the Local did so because there had been a long-standing practice at the Lackawanna plant by which the Local decided which cases would go to arbitration, even if the International Union disagreed. On November 18, 1964, the umpire conducted a hearing at Lackawanna and issued a decision on July 12, 1965 dismissing the Local's grievance. This decision was not unexpected because the issues and arguments had already been thrashed out at the time of his prior decision and nothing had changed in the meantime. At the meeting, the union representatives urged again that the new incentives for the electrical and mechanical maintenance employees were defective for not producing "equitable compensation" but, since this was the same argument which was urged in his

1959 award, it was rejected.

Plaintiffs' complaints about the activities of the Steelworkers are mainly set forth in the affidavit of their counsel dated January 31, 1973. In support of his argument that the Steelworkers failed to represent the plaintiffs properly, counsel discusses a quote of Arthur Jardin, a former staff representative for the Steelworkers, who stated in a deposition that at the time of the final arbitration meeting on November 18, 1964, the representation of the plaintiffs' cause was carried out with "my tongue in my cheek." He explained that he was pressing the plaintiffs' grievances to arbitration at that time because they wanted to arbitrate. Plaintiffs also charge that Jardin incorrectly represented to the umpire that four of the direct unit grievances out of five had still to be agreed upon. Whether Jardin's statement about the number of grievances still open was correct or not, it is beside the point because he made that representation during a long oral argument to the umpire about the merits of the grievances. The umpire had all of the prior records before him in making his

decision and, in his decision of July 12, 1965, the umpire made clear that he was deciding the grievances before him on the record. Furthermore, whether or not one or four units had been previously settled would not in any way affect the decision of the umpire in grievances B-3139 and B-3141. Jardin's remark about proceeding with "my tongue in my cheek" was simply a candid appraisal of the hopelessness of pressing the grievances to arbitration, made by an experienced negotiator.

In paragraph 30 of his affidavit, plaintiffs' counsel discusses the handling of grievances for the "hot mill proper and tandem mill." These were direct units from which the rate of the plaintiffs in this case was in part determined. These grievances were dismissed after the union permitted a deadline to protest an adverse decision to pass. The union responds (Trost affidavit of April 3, 1973) by stating that there was no merit to pressing the grievances in light of the company's agreement to put revised rates into effect covering the workers urging these grievances. The plaintiffs have failed to indicate how the union improperly represented the plaintiffs

in handling the "hot mill and tandem mill" grievances.

The plaintiffs also seek judgment because they claim that certain payroll records of Bethlehem have been lost and that it is impossible to compute retroactive payments which are due to the plaintiffs. This is a matter for arbitration and not one for the court. At a meeting held in May 1966, the company offered to make adjustment of about $89,000 in back pay to the mechanical and electrical employees of the Strip Mill. The offer was rejected by the plaintiffs, who then filed this suit. The company admits certain records are lost but, in any event, this question should be resolved through the grievance procedure, not through court action.

The court has reviewed the various affidavits submitted by the parties discussing how the "representative test period" was chosen and how it ultimately affected the wage to be paid the plaintiffs in this case. The plaintiffs have failed to show that the judgment of the Steelworkers was wrong in selecting this period. It appears that, under the circumstances, it was the most favorable period which could have been selected for the

workers involved in these grievances. Beyond that, it is absolutely clear that there was no showing whatever of any bad faith or negligent act on the part of the union representatives in determining the "representative test period" to be used.

It is not necessary to undertake a detailed analysis of the legal principles involved in this case. Once a grievance has been decided by an arbitrator pursuant to a collective bargaining agreement, as a rule the award is final and binding and not open to attack absent fraud or a breach of duty of fair representation. Humphrey v. Moore, 375 U.S. 335 (1963). The Steelworkers have the "contractual power honestly and in good faith to settle grievances short of arbitration." Vaca v. Sipes, 386 U.S. 171, 192 (1967). As the exclusive representative of the plaintiffs in this lawsuit, it was required "to make an honest effort to serve the interests of all of those members, without hostility to any." Ford Motor Co. v. Huffman, 345 U.S. 330,337 (1953). Its powers are "subject always to complete good faith and honesty of purpose in the exercise of its discretion." Humphrey v. Moore, supra at 342. In Simberlund v. Long Island Railroad Co.,

421 F.2d 1219, 1224, n.8 (2d Cir. 1970), the court stated: "To state a claim for breach of the duty of fair representation justiciable in the federal courts, it must be alleged that the union acted in bad faith." Unions must be accorded a great deal of discretion in making judgments whether or not to settle grievances short of arbitration, Vaca v. Sipes, supra. "Just as a union must be free to sift out wholly frivolous grievances which would only clog the grievance process, so it must be free to take a position on the not so frivolous disputes." Humphrey v. Moore, supra at 349. "Proof that the union may have acted negligently or exercised poor judgment is not enough to support a claim of unfair representation." Bazarte v. United Transportation Union, 429 F.2d 868, 872 (1970).

The history of the processing of these grievances indicates that in making decisions upon what course of action to follow, the Steelworkers' representatives were faced with prior decisions of the umpire adverse to their position. Their decision to consider the electrical and maintenance workers as indirect rather than direct employees

is consistent with good judgment and a sensible construction of the contract. It is difficult to fault the other decisions which were made in connection with the representative test period and the decision to delay the processing of the grievances in this case. A reading of the entire record fails to reveal that the Steelworkers' representative did not exercise good judgment throughout the processing of these grievances.

But even if their judgment was bad, plaintiffs must show more to be successful in this lawsuit. Plaintiffs have failed to show any personal animosity, hostility, ill will, bad faith, poor judgment, negligence, inattention or any other act which would indicate in any way that the Steelworkers' representatives did not carry out their duties as carefully as possible. For these reasons, the cause of action against the Steelworkers must fail. Because there is no proof that the union breached its duty of fair representation, judgment must also be entered against the plaintiffs in their action against Bethlehem. Any claim they have for retroactive pay which is still open should be processed through the grievance procedure.

Decision and Order Dated January 3, 1974.

The Clerk is directed to enter judgment in behalf of both defendants dismissing plaintiffs' complaint without costs.

So ordered.

John T. Curtin

JOHN T. CURTIN
United States District Judge

DATED: January 3, 1974

Amended Complaint.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

LAWRENCE RALPH, and DIVERS OTHERS,
Plaintiffs

Civil Action 11,892

vs.

AMENDED COMPLAINT

THE BETHLEHEM STEEL CORPORATION and,
THE UNITED STEELWORKERS OF AMERICA
Defendants.

I

Plaintiffs bring this action to recover from the defendants herein unpaid wages in the amount of approximately $1,000,000, together with an additional equal amount as punitive damages, together with attorneys fees, pursuant to section 301 of the Taft - Hartley Act of 1947 (29 USCA Section 185).

II

Jurisdiction is conferred on the Court by 28 USCA Section 1337, giving this District Court original jurisdiction of "any civil action or proceeding arising under any act of Congress regulating commerce, "without regard to the citizenship of the parties or the sum or value in controversy, and also by 29 USCA Section 185(a), upon which this cause of action is based.

III

That the defendant Bethlehem Steel Corporation is a corporation organized and existing under and by virtue of the laws of the State of Delaware, and at all times hereinafter mentioned was engaged at Lackawanna, New York in the manufacture and production of steel for interstate commerce within the meaning of the Act. Substantially all of the goods manufactured by defendant during the times hereinafter mentioned have been produced for interstate commerce, and have been sold,offered for transportation, transported, shipped and delivered in interstate commerce from the defendant's place of business at Lackawanna, New York to various points outside the State of New York.

IV

That during the workweeks beginning approximately November of 1960 to the present time, defendant Bethlehem Steel Corporation has employed the

plaintiffs herein in the production of steel for interstate commerce. Substantially all of the goods produced by these employees have been produced for interstate commerce within the meaning of the Act, and have been shipped, delivered, transported or sold with knowledge that shipment, delivery or sale thereof in interstate commerce was intended from defendant's said place of business to other states.

V

That at its said place of business at Lackawanna, New York, from, on or about November, 1960, and previously, to the present, the defendant Bethlehem Steel Corporation employed the plaintiffs herein in part as electrical maintenance workers, and in part as mechanical maintenance workers in order to maintain the operating efficiency of defendant's machinery and equipment.

VI

That during the period from on or about March 13, 1960 to the present time, the defendant Bethlehem Steel Corporation employed the plaintiffs at its said place of business in the production of goods for interstate commerce, within the meaning of the Act, as aforesaid, and has failed and refused to compensate the plaintiffs for such employment as required by but not limited to Article V, Section 2 (C) of the Main Agreement then in force, by the "May 25, 1960 Supplemental Agreement", and by any other supplemental or additional agreements in force and effect from on or about March 13, 1960 to the present time.

VII

That as a result of said failure and refusal to compensate the plaintiffs as aforesaid, the plaintiffs have suffered and continue to suffer serious financial losses, all to their damage in the approximate amount of $1,000,000.

AS AND FOR A SECOND SEPARATE CAUSE OF ACTION

VIII

The plaintiffs repeat and reallege with full force and effect each and every allegation set forth above, as though the same were fully set forth herein.

Amended Complaint.

IX

That at all times hereinafter mentioned, the plaintiffs herein were and still are duly affiliated members of Local 2604 of the United Steelworkers of America.

X.

That in the month of November, 1960, or thereabouts, the plaintiffs' authorized Union representatives instituted grievance proceedings in accordance with the provisions of the collective bargaining agreement then in force, relative to the aforementioned breach of agreement to compensate.

XI

That upon information and belief between the months of November, 1962, and June 1964, and at diverse times between said dates, the said grievances were withdrawn by the plaintiffs' union representatives.

XII

That the said withdrawal constituted an arbitrary, willful breach of fiduciary duty by the said Union officials and caused the plaintiffs to be without further recourse under the terms and conditions as set forth in Article XI of the agreement then in force.

AS AND FOR A THIRD SEPARATE CAUSE OF ACTION

XIII

The plaintiffs herein repeat and reallege with full force and effect each and every allegation set forth above as though the same were fully set forth herein.

XIV

That subsequent to the withdrawal of the said grievances as stated above, officials of the said United Steelworkers of America permitted the time for reinstating said grievance to lapse, said time having expired on the 17th day of June, 1964.

XV

That all of the acts above complained of constitute gross negligence on

the part of said union officials in failing to properly fulfill their obligation to the plaintiffs, causing the plaintiffs to be without further recourse under the terms and conditions set forth in Article II of the agreement then in force.

WHEREFORE, the plaintiffs herein demand judgement against the defendants herein for the sum of approximately $1,000,000, together with an additional equal sum as punitive damages, and attorneys fees, plus interest on all monies past due, pursuant to Section 301 of the Taft - Hartley Act of 1947 (29 USCA Section 185).

Respectfully submitted,

SCOTT AND DORMAN
Attorneys for Plaintiffs
43 Court Street
Buffalo 2, New York
852-3950

By: William D. Scott
William D. Scott

To:

Hodgson, Russ, Andrews, Woods & Goodyear
Attorneys for Defendant Bethlehem Steel Corp.
Office and P. O. Address
800 M. & T. Building
Buffalo, New York 14203

Michael Gottesman, Esq.
Bredhoff & Gottesman
Attorneys for Defendant United Steelworkers of America
1001 Connecticut Avenue, N. W.
Washington, D. C.

Frank Borowiec, Esq.
Of Counsel for Bredhoff & Gottesman
Office and P. O. Address
300 Edwards Building
155 Franklin Street
Buffalo, New York 14202

Defendant United Steelworkers' Amended Answer
to Amended Complaint.

U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

LAWRENCE RALPH, AND DAVIS, AND OTHERS PLAINTIFFS VS. THE BETHLEHEM STEEL CORPORATION, AND THE UNITED STEELWORKERS OF AMERICA DEFENDANTS	Civil Action No. 11892

AMENDED ANSWER

DEFENDANT, UNITED STEELWORKERS OF AMERICA answers the amended complaint as follows:

FIRST DEFENSE

1. Each and every allegation of Paragraphs I, II, VI, VII, XI, XII, XIV AND XV is denied.

2. Defendant denies knowledge or information sufficient to form a belief as to the allegations of Paragraphs III, IV AND V.

3. Defendant admits the allegation of Paragraph IX insofar as Plaintiff Lawrence Ralph is concerned. Defendant tentatively admits the allegation of Paragraph IX with respect to the other individuals listed on "Formal List of Plaintiffs in Addition to Lawrence Ralph", reserving the right to correct this answer after further investigation.

4. Defendant denies the allegations of Paragraph X as stated. Defendant admits that in June, 1960, grievances were instituted challenging certain incentive plans instituted by the Company.

Defendant United Steelworkers' Amended Answer
to Amended Complaint.

SECOND DEFENSE

The complaint fails to state a claim against this defendant upon which relief can be granted.

THIRD DEFENSE

Plaintiffs have not exhausted their remedies under the collective bargaining agreement.

FOURTH DEFENSE

This action is barred by the applicable statute of limitations and/or by laches.

FIFTH DEFENSE

Plaintiffs, as a matter of law, cannot collect punitive damages or attorneys' fees in this type of action.

WHEREFORE, the defendant, United Steelworkers of America, prays that the complaint be dismissed and that said defendant be awarded its costs.

Respectfully submitted,

By

Frank B. Berewies
300 Edwards Bldg.
155 Franklin St.
Buffalo, New York

Michael Gottesman
Bredhoff & Gottesman
1001 Connecticut Avenue, N.W.
Washington, D. C.

CERTIFICATE OF SERVICE

I certify that copies of this amended answer have been served upon counsel for plaintiff, William J. Scott, 43 Court St., Buffalo, New York, and counsel for defendant Bethlehem Steel, Hugh Ross, 800 M & T Building, Buffalo, New York.

Dated: November 23, 1966

Defendant Bethlehem Steel Corporation's Amended Answer to Amended Complaint.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

LAWRENCE RALPH, and DIVERS OTHERS,

Plaintiffs

-v-

CIVIL ACTION NO. 11,[illegible]

THE BETHLEHEM STEEL CORPORATION and THE UNITED STEELWORKERS OF AMERICA

Defendants

Defendant, The Bethlehem Steel Corporation, above named, for its answer to the plaintiffs' complaint:

FIRST: Denies all the allegations contained in that paragraph or subdivision of plaintiffs' complaint numbered III, except that it is a corporation organized and existing under the laws of the State of Delaware and except that it has a plant at Lackawanna, New York.

SECOND: Denies that it has any knowledge or information sufficient to form a belief thereof as to all the allegations contained in those paragraphs or subdivisions of plaintiffs' complaint numbered, I, II, IV, V, VI, VII, IX, X, XI, XII, XIV and XV.

THIRD: For its answer to the allegations contained in Paragraphs numbered VIII and XIII of the complaint, the defendant The Bethlehem Steel Corporation repeats and realleges all the other allegations of this answer.

FOR A FIRST, AFFIRMATIVE AND DISTINCT DEFENSE TO THE PLAINTIFFS' COMPLAINT AND TO ALL THE CAUSES OF ACTION THEREIN DEFENDANT, THE BETHLEHEM STEEL CORPORATION ALLEGES AS FOLLOWS:

FOURTH: Upon information and belief that the alleged claims, if any, referred to in the complaint have been submitted to arbitration in accordance with the provisions of the applicable collective bargaining agreement or agreements between The Bethlehem Steel Corporation and the defendant The United Steelworkers of America and that a final arbitration award denying these claims, if any, has been granted.

FIFTH: Upon information and belief that the award herein referred to is binding and final on the plaintiffs so that this action is therefore barred by said award and this court has no jurisdiction.

FOR A SECOND, AFFIRMATIVE AND DISTINCT DEFENSE TO THE PLAINTIFFS' COMPLAINT AND TO ALL THE CAUSES OF ACTION THEREIN DEFENDANT THE BETHLEHEM STEEL CORPORATION ALLEGES AS FOLLOWS:

SIXTH: That in the event it is determined that the arbitration award referred to in Paragraphs FOURTH and FIFTH of this answer is not final as to any of the matters set forth in the complaint then plaintiffs' sole remedy with respect to those claims or matters is under the grievance and arbitration procedure provided for under the collective bargaining agreement or agreements between defendant The Bethlehem Steel Corporation and defendant The United Steelworkers of America.

SEVENTH: That plaintiffs have not requested the defendant the Bethlehem Steel Corporation to process any such alleged claim, dispute or right which they or any of them may have by reason of any of the alleged matters set forth in the complaint so that this action is therefore barred and this court has no jurisdiction over the matters alleged in the complaint.

Defendant Bethlehem Steel Corporation's Amended
Answer to Amended Complaint.

FOR A THIRD, AFFIRMATIVE AND DISTINCT PARTIAL DEFENSE TO THE PLAINTIFFS' COMPLAINT AND TO ALL THE CAUSES OF ACTION THEREIN DEFENDANT THE BETHLEHEM STEEL CORPORATION ALLEGES AS FOLLOWS:

EIGHTH: That there is no provision under the law for punitive damages as claimed in Paragraph I of the complaint so that this court cannot allow any sum or sums for the same.

FOR A FOURTH, AFFIRMATIVE AND DISTINCT PARTIAL DEFENSE TO THE PLAINTIFFS' COMPLAINT AND TO ALL THE CAUSES OF ACTION THEREIN DEFENDANT THE BETHLEHEM STEEL CORPORATION ALLEGES AS FOLLOWS:

NINTH: That there is no provision under the law for attorneys fees as claimed in Paragraph I of the complaint so that this court cannot allow any sum or sums for the same.

WHEREFORE, defendant The Bethlehem Steel Corporation demands the dismissal of the complaint together with costs and disbursements of this action.

Respectfully submitted,

HODGSON, RUSS, ANDREWS, WOODS & GOODYEAR
Attorneys for defendant,
The Bethlehem Steel Corporation
Office and Post Office Address
800 M & T Building
Buffalo, New York 14202

By Hugh McM. Russ
Hugh McM. Russ

Plaintiffs' Interrogatories.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

LAWRENCE RALPH, and DIVERS OTHERS,

Plaintiffs

vs.

THE BETHLEHEM STEEL CORPORATION and THE UNITED STEELWORKERS OF AMERICA,

Defendants

Civil Action No. 11,892
Written Interrogatories

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, the following interrogatories are hereby propounded to the Bethlehem Steel Corporation, defendant, by the Plaintiffs herein, to be answered by a qualified agent or agents of the said Bethlehem Steel Corporation, upon oath, in accordance with Rule 33 of the Federal Rules of Civil Procedure.

Using the list of plaintiffs supplied at your request on August 12, 1966, please answer the following:

1. State whether, from March 13, 1960 to the date of this demand, any of the plaintiffs have been entitled at any time to benefits under any "incentive based on standard hourly wage rates," within the meaning of Paragraph 1(B) of the January 4, 1960 Memorandum of Understanding entered into between the two defendants herein.

2. If the answer to question Number 1 is "yes," state:

   A. Which of the plaintiffs have been or are now so entitled.

   B. The date when each such plaintiff first became so entitled.

   C. The date when each such plaintiff ceased to be entitled to such benefits.

3. Beginning with the week of Sunday, March 13, 1960, state the percent of output or production at which the Lackawanna plant operated, week by week, for each and every week from Sunday, March 13, 1960, to the date of this demand.

4. Beginning with the week of Sunday, March 13, 1960, state the percent of output or production at which the various divisions, mills, and departments of said Lackawanna plant operated, week by week, for each and every week from Sunday, March 13, 1960, to the date of this demand.

5. Beginning with the week of Sunday, March 13, 1960, state the "percent performance" figures for each of the various divisions, mills, and departments

of said Lackawanna plant for which percent performance is computed, week by week for each and every week from Sunday, March 13, 1960 to the date of this demand.

6. Beginning with the week of Sunday, March 13, 1960, to the date of this demand, state the total gross hourly wages of each plaintiff on a week to week basis, giving the standard hourly wage rate, the incentive adjustment, and any other factors which contribute to the total gross hourly rate listed.

7. State whether any or all of the plaintiffs are now or have ever been "direct workers", within the meaning of paragraph 1(a)(1) of the January 4, 1960 Memorandum of Understanding entered into between the two defendants herein.

8. If the answer to question number 7 is "yes", state which of the plaintiffs were or are now "direct workers," the period of time during which they were so classified, and which of the plaintiffs were or are now "indirect workers", and the period of time during which they were so classified.

9. State whether or not a new rate of pay was established affecting any and or all of the plaintiffs herein, beginning on or about the week of Sunday, April 17, 1960, which rate of pay was established pursuant to Article 5, Section 2 of the Main Agreement, and or any provisions of the May 25, 1956 Supplemental Agreement.

10. If the answer to question number 9 is "yes", state which of the plaintiffs were paid under this new rate, which are still paid under the said rate, whether said rate established on or about Sunday, April 17, 1960 is still in effect and if not, state what rate or rates have replaced it, how they are computed, the dates and duration of any "test periods" relating to the establishment of any such new rate, and the results obtained in any such "test period", including but not limited to the average hourly earnings difference and percent performance figures for said test period.

State also, under what, if any, provisions of the Main Agreement or any supplemental agreements thereto the said rate or rates were established.

11. If any and/or all of the plaintiffs have been and/or are now paid under a rate other than that established on or about April 17, 1960, as defined in paragraph number 9 above, state the rate or rates under which each such plaintiff has been and/or is now paid, the method of computing said rate for

each said plaintiff, the dates and duration of any test period used to compare said other or different rate to the rate which it replaced, and the results of said comparison, including but not limited to the average hourly earnings difference and percent performance figures for said test period.

12. State the "average hourly earnings" figure for each and every plaintiff, as computed in accordance with the incentive wage plan in effect prior to April 17, 1960, for the "test period" of July 5, 1959 to January 30, 1960, (excluding the weeks of July 18, 1959 through November 7, 1959).

13. For the same "test period" as stated above, state the "average hourly earnings" for each and every plaintiff as computed in accordance with the "incentive wage plan" put into effect on or about April 17, 1960, as defined in paragraph number 9, above. State also the percent performance figures for such test period.

14. State the "average hourly earnings" figure for each and every plaintiff, as computed in accordance with the "incentive wage plan" in effect prior to April 17, 1960, for a period of three (3) months next preceding the week beginning April 17, 1960.

15. State the "average hourly earnings" figure for each and every plaintiff, as computed in accordance with the "incentive wage plan" that became effective April 17, 1960, as stated in paragraph number 9, above, for a period of three (3) months next preceding the week beginning April 17, 1960. State also the percent performance figures for such test period.

16. Beginning with the week of Sunday, March 13, 1960, state the departments, mills or divisions of the plant in which each individual plaintiff has been employed, to the date of this demand.

17. State fully and in detail whether the defendant Bethlehem Steel Corporation is indebted to the plaintiffs in any sum whatsoever arising from a failure to pay the plaintiffs as alleged in the complaint herein.

18. If the answer to question number 17 is "yes", state what sum is due and payable to each plaintiff, and state how said figure is calculated.

19. State whether or not the defendant Bethlehem Steel Corporation has at any time offered to pay the plaintiffs herein the amount demanded, or some other amount, or has at any time stated to the plaintiffs or their representatives that some amount was due and would be paid.

Plaintiffs' Interrogatories.

20. State precisely each and every defense that the defendant Bethlehem Steel Corporation will seek to rely upon at the trial of this Action.

21. State any other fact or facts known to you and not covered by the answers to the preceding interrogatories which are in any way relied upon by the defendant Bethlehem Steel Corporation as a reason or reasons for not paying the plaintiffs the amount set forth in the complaint herein or some amount.

DATED:
OCTOBER 7, 1966

Yours etc.,

William D. Scott

SCOTT AND DODMAN
by: William D. Scott, of counsel
Attorneys for Plaintiffs
Office and P. O. Address
43 Court Street
Buffalo, New York 14202
854-8850

To:

Hodgson, Russ, Andrews, Woods, & Goodyear
Attorneys for Defendant Bethlehem Steel Corp.
Office and P. O. Address
800 M. & T. Building
Buffalo, New York 14203

Michael Gottesman, Esq.
Bredhoff & Gottesman
Attorneys for Defendant United Steelworkers of America
1001 Connecticut.Ave., N. W.
Washington, D. C.

Frank Borowiec, Esq.
Of Counsel for Bredhoff & Gottesman
Office and P. O. Address
300 Edwards Building
155 Franklin Street
Buffalo, New York 14202

Defendant Bethlehem Steel Corporation's Answer to Plaintiffs' Interrogatories.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

LAWRENCE RALPH and DIVERS OTHERS

Plaintiffs

-v-

THE BETHLEHEM STEEL CORPORATION and THE UNITED STEELWORKERS OF AMERICA

Defendants

ANSWER TO WRITTEN INTERROGATORIES
CIVIL ACTION NO. 11,892

The defendant, The Bethlehem Steel Corporation, by its attorneys, Hodgson, Russ, Andrews, Woods & Goodyear, for its answers to the plaintiffs' written interrogatories, respectfully answers as follows:

The defendant, The Bethlehem Steel Corporation, objects to each and every interrogatory of plaintiffs numbered 1 through 21 inclusive and states that it has simultaneously herewith, filed formal objections to same in accordance with Rule 33, Fed. R. Civ. Prec., but that in order to facilitate and save the valuable time of this Court, it makes limited answers to the best of its ability to the following interrogatories, but that such answers are not to be deemed a waiver of defendant's objections to same, which objections are reserved for the decision of this Court:

1. Interrogatory No. 1: Plaintiffs were entitled to incentive premiums under an "incentive based on standard hourly wage rates" within the meaning of Paragraph 1(b) of the Memorandum of Understanding of January 4, 1960 provided that plaintiffs worked in incentive rated mechanical or electrical maintenance jobs or positions for the period or periods in the Continuous Sheet, Strip and Plate Mills Department at defendant's Lackawanna plant from April 17, 1960 to and including October 7, 1966

and providing that all of the conditions and requirements of the incentive plans in effect during the appropriate periods were met.

2. Interrogatory No. 2: In answer to this interrogatory see Exhibit 1 which is attached hereto and made a part hereof and which indicates the inclusive dates on which each of the plaintiffs were working in electrical or mechanical maintenance positions in the Continuous Sheet, Strip and Plate Mills Department during the period April 17, 1960 to October 7, 1966.

3. Interrogatories Nos. 3 and 4: Objected to and therefore no answer.

4. Interrogatory No. 5: Attached hereto and made a part hereof in response are Exhibits 2A and 2B which reflect the "percent performance" figures for the units of the Continuous Sheet, Strip and Plate Mills Department of defendant's Lackawanna plant which contribute to the maintenance incentive plans in question for the weeks ending April 23, 1960 through October 8, 1966 inclusive.

5. Interrogatory No. 6: Attached hereto and made a part hereof in response are Exhibits 3A and 3B and Exhibit 4A and 4B, which exhibits, when combined with Exhibits 2A and 2B, denote the incentive earnings or compensation for each job or position in the electrical and mechanical maintenance groups of the Continuous Sheet, Strip and Plate Mills Department for any and all periods from April 17, 1960 to the present.

6. Interrogatory No. 7: Objected to and therefore no answer.

7. Interrogatory No. 8: No answer required.

Defendant Bethlehem Steel Corporation's Answer to Plaintiffs' Interrogatories.

8. Interrogatory No. 9: No "new rate of pay" was established on or about the week of Sunday, April 17, 1960. Two incentive plans, one for electrical and one for mechanical maintenance workers were established on April 17, 1960 pursuant to Article V, Section 2(a) of the existing Main Agreement and Section 5(a) of the Supplemental Agreement dated May 25, 1956 and in compliance with the Memorandum of Understanding of January 4, 1960, in the Continuous Sheet, Strip and Plate Mills Department of defendant's Lackawanna plant.

9. Interrogatory No. 10: No answer required. See No. 9.

10. Interrogatory No. 11: Objected to and therefore no answer.

11. Interrogatory No. 12: No such computation was required to be made and therefore none has been made.

12. Interrogatory No. 13: In answer to the first sentence, defendant states that no such computation was required and that none has been made. In response to the second sentence, see Exhibit 5 attached hereto and made a part hereof.

13. Interrogatory No. 14: No such computation has been made.

14. Interrogatory No. 15: No such computation for each and every plaintiff has been made.

15. Interrogatory No. 16: See Exhibit 1 which reflects the employment of the plaintiffs in the Continuous Sheet, Strip and Plate Mills Department of defendant's Lackawanna plant.

Defendant Bethlehem Steel Corporation's Answer to
Plaintiffs' Interrogatories.

16. Interrogatory No. 17: Defendant is not indebted to the plaintiffs in any sum as alleged in the amended complaint herein. As noted in Decision No. 1138, dated July 12, 1965 which was rendered by Impartial Umpire Ralph T. Seward, in the Matter of Bethlehem Steel Company and United Steelworkers of America, Local Union No. 2604, certain sums representing incentive earnings of electrical and mechanical maintenance workers in the Continuous Sheet, Strip and Plate Mills Department have not yet been paid pending the disposition of an outstanding grievance now pending before Impartial Umpire Seward.

17. Interrogatory No. 18: No answer required.

18. Interrogatory No. 19: Objected to and therefore no answer.

19. Interrogatory No. 20: See defendant's amended answer. Defendant will also rely on each and every defense afforded to it either statutorily or by case law.

20. Interrogatory No. 21: Objected to and therefore no answer.

Dated: December 6, 1966.

Yours, etc.

By_____
Hugh McM. Russ
HODGSON, RUSS, ANDREWS, WOODS & GOODYEAR
Attorneys for Def.-Bethlehem Steel
Office and Post Office Address
800 M & T Building, Buffalo, New York

TO: SCOTT AND DORMAN
Attorneys for Plaintiffs
Office and Post Office Address
43 Court Street, Buffalo, New York 14202

Defendant Bethlehem Steel Corporation's Answer to
Plaintiffs' Interrogatories.

TO: MICHAEL GOTTESMAN, ESQ.
Bredhoff & Gottesman
Attorneys for Def. United Steelworkers of America
1001 Connecticut Ave., N.W.
Washington, D. C.

FRANK BOROWIEC, ESQ.,
Of Counsel for Bredhoff & Gottesman
Office and P. O. Address
300 Edwards Bldg.
155 Franklin Street
Buffalo, New York

EXHIBIT 1 OMITTED BY CONSENT.

LIST OF 471 PLAINTIFFS

BETHLEHEM STEEL CORPORATION
- Lackawanna Plant -

Continuous Sheet, Strip & Plate Mills - Mechanical & Electrical Maintenance - History of Performance

	Percent Performance Contribution to Maintenance Plan										
Wk. Ending	Hot Mill Proper	Hot Mill Shipping	Continuous Picklers #1-2-3	54"-75" Tandem Mills	Annealing	Skin Mills #2-3-5	Cold Mill Shipping	Total Factored Performance	No. of Factors	Average Factored Performance	Maintenance Performance
Factor	9	1 ✓	3 ✓	2	1	2	2 ✓				
4-23-60	121.79%	100.00%	107.64%	111.85%	123.01%	119.93%	104.33%	2314.26%	20	115.71%	110.53%
4-30-60	121.72	100.00	105.36	113.04	116.49	117.92	100.00	2289.97	20	114.50	109.72
5-7-60	126.44	100.00	106.69	110.80	117.57	118.53	107.72	2349.70	20	117.49	111.72
5-14-60	125.61	100.00	105.50	110.73	116.91	119.02	100.00	2323.40	20	116.17	110.83
5-21-60	111.75	100.00	105.50	106.33	115.71	111.75	100.00	2174.12	20	108.71	105.84
5-28-60	116.91	100.00	102.89	111.12	113.31	116.26	100.00	2228.93	20	111.45	107.67
6-4-60	109.53	100.00	106.89	107.14	114.37	117.19	100.00	2169.47	20	108.47	105.67
6-11-60	114.27	100.00	104.22	109.55	114.97	120.09	100.00	2215.34	20	110.77	107.22
6-18-60	108.81	100.00	105.62	110.37	113.07	113.16	100.00	2156.28	20	107.81	105.22
		Straight Average 2nd Quarter - 1960									108.27
6-25-60	116.27%	100.00%	102.95%	111.66%	120.56%	110.05%	100.00%	2219.26%	20	110.96%	107.34%
7-2-60	119.07	110.00	106.33	115.43	118.51	110.89	110.00	2261.77	20	113.09	108.77
7-9-60	109.88	100.00	105.23	107.08	114.84	110.69	100.00	2154.99	20	107.74	105.19
7-16-60	114.84	117.80	101.36	108.65	116.69	110.71	100.00	2210.85	20	110.54	107.06
7-23-60	114.12	100.00	105.69	107.41	112.78	104.65	106.83	2194.71	20	109.74	106.53
7-30-60	113.68	112.40	102.97	110.25	118.40	102.53	100.00	2188.39	20	109.42	106.31
8-6-60	106.98	100.00	102.46	108.71	114.50	104.56	105.92	2123.08	20	106.15	104.12
8-13-60	113.01	131.80	108.36	108.12	109.81	107.46	108.09	2231.13	20	111.56	107.75
8-20-60	111.16	122.20	112.70	114.17	111.67	103.19	100.00	2207.13	20	110.36	106.94
8-27-60	115.22	100.00	110.92	114.18	110.76	105.55	102.92	2225.80	20	111.29	107.56
9-3-60	116.33	114.60	111.70	109.20	118.59	104.47	100.00	2242.60	20	112.13	108.13
9-10-60	119.94	100.00	112.62	108.70	112.61	104.96	110.20	2277.65	20	113.88	109.30
9-17-60	117.57	126.50	118.04	109.10	117.07	105.69	117.75	2320.90	20	116.05	110.75
9-24-60	115.94	100.00	115.19	108.76	112.44	105.15	102.42	2234.13	20	111.71	107.85
		Straight Average 3rd Quarter - 1960									107.40%

Exhibit 2A

Exhibit 2A Attached to Defendant Bethlehem Steel Corporation's Answer to Interrogatories.

Exhibit 2A Attached to Defendant Bethlehem Steel Corporation's Answer to Interrogatories.

BETHLEHEM STEEL CORPORATION

- Lackawanna Plant -

Sheet 2 of 14

Continuous Sheet, Strip & Plate Mills - Mechanical & Electrical Maintenance - History of Performance

	Percent Performance Contribution to Maintenance Plan										
Mr. Ending / Factor	Hot Mill Proper 9	Hot Mill Shipping 1	Continuous Pickler #1-2-3 3	54"-75" Tandem Mills 2	Annealing 1	Skin Mills #2-3-5 2	Cold Mill Shipping 2	Total Factored Performance	No. of Factors	Average Factored Performance	Maintenance Performance
10-1-60	112.59%	100.00%	112.39%	104.77%	118.95%	106.96%	100.00%	2192.89%	20	109.64%	106.46%
10-8-60	110.35	100.00	112.56	109.18	109.25	103.83	100.00	2166.10	20	108.31	105.57
10-15-60	109.14	100.00	116.58	109.19	114.90	103.97	104.08	2181.38	20	109.07	106.68
10-22-60	105.09	103.20	117.63	110.40	120.02	104.32	100.00	2151.36	20	107.57	105.07
10-29-60	111.53	100.00	120.59	107.21	117.89	103.18	100.00	2204.21	20	110.21	106.87
11-5-60	114.46	112.43	116.73	106.26	123.51	102.89	100.00	2234.57	20	111.73	107.86
11-12-60	-	107.80	105.82	106.14	112.20	102.73	101.10	1157.40	11	105.22	103.58
11-19-60	114.46	100.00	103.51	100.95	116.50	106.17	100.00	2171.41	20	108.57	105.78
11-26-60	114.46	100.00	106.56	107.39	119.14	102.76	100.00	2189.26	20	109.46	106.58
12-3-60	114.46	111.17	111.25	103.36	121.90	100.86	100.00	2205.40	20	110.27	107.39
12-10-60	-	-	107.01	106.51	119.73	100.90	100.00	1057.08	10	105.56	103.37
12-17-60	114.46	100.00	113.20	103.58	118.25	102.61	100.00	2200.37	20	110.12	106.93
12-24-60	114.46	100.00	108.97	106.39	122.98	101.15	100.00	2195.11	20	109.76	106.58
	Straight Average 4th Quarter - 1960										105.99%
12-31-60	114.46%	100.00%	115.07%	106.35%	118.79%	102.11%	100.00%	2211.06%	20	110.55%	107.07%
1-7-61	114.46	106.67	107.80	109.53	117.17	104.50	100.00	2205.44	20	110.27	106.88
1-14-61	114.46	118.17	113.59	106.90	122.91	102.68	100.00	2230.35	20	111.52	107.72
1-21-61	114.46	125.88	112.78	106.71	124.57	105.68	100.00	2243.71	20	112.19	108.17
1-28-61	114.46	100.00	112.58	104.45	116.32	103.26	100.00	2199.62	20	109.98	106.69
2-4-61	115.94	100.83	109.70	110.73	114.72	103.82	100.00	2217.21	20	110.86	107.28
2-11-61	-	146.60	104.05	109.18	113.75	103.29	100.00	1197.44	11	108.86	105.54
2-18-61	114.74	102.43	108.83	104.07	130.19	104.39	100.00	2208.69	20	110.43	106.99
2-25-61	127.72	122.75	105.99	106.62	125.06	105.79	100.00	2340.08	20	117.00	111.39
3-4-61	121.41	100.00	109.54	107.80	110.28	103.41	100.00	2254.01	20	112.70	108.61
3-11-61	-	100.00	102.67	107.52	122.09	106.27	100.00	1157.68	11	105.24	103.51
3-18-61	115.07	101.80	105.36	105.07	120.75	106.25	100.00	2196.30	20	109.82	106.58
3-25-61	118.86	100.00	104.87	104.81	121.37	104.48	100.00	2224.30	20	111.22	107.52
	Straight Average 1st Quarter - 1961										107.25%

BETHLEHEM STEEL CORPORATION
- Lackawanna Plant -

Continuous Sheet, Strip & Plate Mills - Mechanical & Electrical Maintenance - History of Performance

	Percent Performance Contribution to Maintenance Plan										
Wk. Ending	Hot Mill Proper	Hot Mill Shipping	Continuous Picklers #1-2-3	54"-75" Tandem Mills	Annealing	Skin Mills #2-3-5	Cold Mill Shipping	Total Factored Performance	No. of Factors	Average Factored Performance	Maintenance Performance
Factor	9	1	3	2	1	2	2				
4-1-61	119.93%	144.20%	112.17%	109.25%	120.65%	109.14%	100.00%	2317.51%	20	115.88%	110.64%
4-8-61	119.71	100.22	114.37	109.52	119.74	109.14	100.00	2277.78	20	113.89	109.31
4-15-61	121.25	102.29	115.08	110.61	115.34	107.56	100.00	2290.46	20	114.52	109.73
4-22-61	124.49	100.00	112.44	108.27	118.35	108.43	101.33	2312.14	20	115.61	110.46
4-29-61	126.66	100.00	108.67	110.79	116.57	107.35	119.58	2358.56	20	117.93	112.01
5-6-61	129.65	102.20	110.3[illegible]	102.33	117.60	105.20	100.00	2332.88	20	116.64	111.15
5-13-61	120.52	100.00	110.[illegible]	102.88	116.77	107.39	116.00	2286.30	20	114.32	109.59
5-20-61	129.14	100.00	112.[illegible]	103.84	113.14	103.13	127.36	2380.75	20	119.03	112.75
5-27-61	131.91	100.00	110.[illegible]	106.18	119.13	104.73	130.36	2420.06	20	121.00	114.07
6-3-61	121.17	100.00	109.[illegible]	107.06	112.52	104.24	106.50	2266.76	20	113.34	108.94
6-10-61	119.80	100.00	105.75	104.28	116.26	104.75	111.07	2251.91	20	112.60	108.44
6-17-61	-	100.00	104.44	106.79	123.46	101.94	114.25	1182.74	11	107.52	105.04
6-24-61	111.19	100.00	105.84	111.24	125.84	102.99	100.00	2172.53	20	108.63	105.78
	Straight Average - 2nd Quarter - 1961										109.84%
7-1-61	119.95%	100.00%	105.15%	107.29%	119.03%	105.55%	100.00%	2239.71%	20	111.99%	108.03%
7-8-61	-	100.00	106.97	100.50	121.96	101.05	100.00	1145.97	11	104.18	102.80
7-15-61	112.43	100.00	107.82	104.19	113.80	104.13	100.00	2165.77	20	108.29	105.55
7-22-61	115.41	100.00	108.60	107.53	118.48	102.80	100.00	2203.63	20	110.18	106.82
7-29-61	117.11	100.00	106.71	105.48	116.31	102.34	100.00	2206.07	20	110.30	106.90
8-5-61	121.69	100.00	108.03	103.74	117.96	103.25	100.00	2251.25	20	112.56	108.42
8-12-61	117.21	100.00	105.36	107.02	120.62	104.68	100.50	2215.99	20	110.80	107.24
8-19-61	124.77	100.00	106.87	106.96	114.19	102.57	106.42	2289.63	20	114.48	109.70
8-26-61	127.61	108.30	108.25	104.27	115.24	106.68	100.00	2318.68	20	115.93	110.67
9-2-61	117.56	100.67	105.69	105.01	114.72	106.28	100.00	2213.08	20	110.65	107.14
9-9-61	119.25	100.00	105.15	103.70	116.21	106.02	111.67	2247.69	20	112.38	108.29
9-16-61	124.46	106.11	105.36	105.73	110.82	106.00	101.19	2278.99	20	113.95	109.35
9-23-61	122.64	106.20	108.98	113.65	111.82	107.18	127.67	2345.72	20	117.29	111.58
	Straight Average 3rd Quarter - 1961										107.88%

Exhibit 2A Attached to Defendant Bethlehem Steel Corporation's Answer to Interrogatories.

Exhibit 2A Attached to Defendant Bethlehem Steel Corporation's Answer to Interrogatories.

[redacted] Steel Corporation
- Lackawanna Plant -

Continuous Sheet, Strip & Plate Mills - Mechanical & Electrical Maintenance - History of Performance

Percent Performance Contribution to Maintenance Plan

Wk. Ending	Hot Mill Proper	Hot Mill Shipping	Continuous Pickler #1-2-3	54"-79" Tandem Mills	Annealing	Strip Mills #2-3-5	Cold Mill Shipping	Total Factored Performance	No. of Factors	Average Factored Performance	Maintenance Performance
Factor	9	1	3	2	1	2	2				
9-30-61	126.38%	100.00%	107.66%	108.90%	111.18%	107.29%	100.00%	2304.05%	20	115.20%	110.18%
10-7-61	129.46	109.55	104.57	106.49	116.73	108.39	128.42	2391.73	20	119.59	113.13
10-14-61	115.47	100.00	104.73	108.46	114.82	104.18	100.00	2193.52	20	109.68	106.49
10-21-61	120.78	100.00	106.11	105.38	117.65	104.51	140.00	2322.78	20	116.14	110.81
10-28-61	118.92	100.00	109.51	107.53	110.51	103.58	125.67	2282.88	20	114.14	109.47
11-4-61	118.44	100.00	107.58	109.82	111.61	104.12	127.67	2285.53	20	114.28	109.57
11-11-61	123.00	100.00	111.50	109.17	111.21	103.57	128.33	2334.85	20	116.74	111.22
11-18-61	119.92	100.00	115.18	112.28	111.07	103.79	123.00	2314.03	20	115.70	110.52
11-25-61	126.68	100.00	115.80	115.17	108.60	101.46	104.09	2337.56	20	116.88	111.31
12-2-61	125.36	120.27	118.02	113.52	110.67	103.97	126.17	2392.58	20	120.02	113.41
12-9-61	132.37	125.55	117.69	112.89	117.05	104.50	141.15	2504.08	20	125.20	116.88
12-16-61	125.94	100.00	110.36	107.95	112.12	104.02	128.85	2358.30	20	117.92	112.01
12-23-61	125.54	100.00	107.94	110.26	118.68	106.58	131.92	2369.88	20	118.49	112.59
		Straight Average 4th Quarter - 1961									111.34%
12-30-61	133.23%	100.00%	108.92%	105.02%	120.17%	105.61%	100.42%	2368.10%	20	118.41%	112.33%
1-6-62	123.35	103.83	106.47	110.05	118.08	106.01	119.11	2321.81	20	116.09	110.78
1-13-62	125.79	100.00	105.81	107.23	114.49	105.03	115.30	2319.15	20	115.96	110.69
1-20-62	117.76	100.00	110.22	106.07	114.34	104.37	115.76	2257.24	20	112.86	108.62
1-27-61	134.91	100.00	111.18	111.35	108.36	108.98	124.57	2445.89	20	122.29	114.93
2-3-62	121.83	100.00	111.31	107.35	107.38	104.56	120.33	2302.26	20	115.11	110.12
2-10-62	130.88	100.00	107.69	111.68	108.90	105.40	111.45	2366.95	20	118.35	112.29
2-17-62	126.12	100.00	110.45	109.38	110.48	104.64	111.05	2327.05	20	116.35	110.95
2-24-62	122.19	100.00	113.13	108.44	116.56	102.53	105.26	2288.12	20	114.41	109.65
3-3-62	126.75	100.00	111.05	105.91	119.11	103.32	06.05	2321.95	20	116.10	110.79
3-10-62	127.40	100.00	114.89	107.64	124.26	101.45	.00.00	2333.71	20	116.69	111.18
3-17-62	124.86	100.00	111.25	103.67	121.79	104.05	104.00	2302.72	20	115.14	110.14
3-24-62	123.24	100.00	110.35	105.74	118.30	104.48	111.16	2301.27	20	115.06	110.09
		Straight Average 1st Quarter - 1962									110.97%

BETHLEHEM STEEL CORPORATION
- Lackawanna Plant -

Continuous Sheet, Strip & Plate Mills - Mechanical & Electrical Maintenance - History of Performance

	Percent Performance Contribution to Maintenance Plan										
Wk. Ending	Hot Mill Proper	Hot Mill Shipping	Continuous Picklers #1-2-3	54"-75" Tandem Mills	Annealing	Skin Mills #2-3-5	Cold Mill Shipping	Total Factored Performance	No. of Factors	Average Factored Performance	Maintenance Performance
Factor	9	1	3	2	1	2	2				
3-31-62	124.73%	100.00%	111.84%	109.24%	114.20%	105.81%	100.84%	2304.07%	20	115.20%	110.18%
4-7-62	120.12	100.00	109.77	107.89	121.36	102.67	100.00	2253.27	20	112.66	108.48
4-14-62	114.15	100.00	104.20	107.81	124.94	101.20	100.00	2182.91	20	109.15	106.13
4-21-62	112.16	100.00	106.66	107.79	121.75	118.98	100.00	2204.71	20	110.24	106.86
4-28-62	116.49	100.00	105.26	105.68	121.27	102.49	100.00	2201.80	20	106.94	104.65
5-5-62	-	100.00	-	-	115.59	101.67	100.00	618.93	6	103.16	102.12
5-12-62	113.31	100.00	102.76	100.19	126.05	101.79	100.00	2158.08	20	107.90	105.29
5-19-62	116.35	100.00	104.50	103.71	118.63	101.34	101.17	2191.72	20	109.59	106.43
5-26-62	-	-	108.75	107.06	116.32	100.39	100.00	1057.47	10	105.75	103.85
6-2-62	117.97	100.00	-	-	120.16	100.66	100.00	1683.21	15	112.21	108.18
6-9-62	121.00	100.00	103.31	101.08	101.22	101.06	100.00	2204.43	20	110.22	106.85
6-16-62	-	100.00	106.67	103.34	112.58	104.85	100.00	1148.97	11	104.45	102.98
6-23-62	114.21	-	105.45	102.95	120.29	108.78	100.00	2087.99	19	109.89	106.63
		Straight Average 2nd Quarter - 1962									106.05%
6-30-62	115.36%	100.00%	104.53%	102.01%	114.81%	105.20%	100.00%	2180.76%	20	109.04%	106.06%
7-7-62	-	100.00	-	104.64	118.60	108.42	113.17	871.06	8	108.88	105.95
7-14-62	114.28	100.00	105.80	101.89	121.12	107.54	117.17	2220.24	20	111.01	107.38
7-21-62	-	118.33	105.80	104.88	123.98	107.22	113.80	1211.51	11	110.14	106.79
7-28-62	122.75	100.00	106.51	102.78	123.68	108.93	100.00	2271.38	20	113.57	109.09
8-4-62	119.47	112.33	105.12	101.86	122.48	103.30	119.40	2274.52	20	113.73	109.20
8-11-62	-	110.50	106.14	102.83	118.90	106.33	100.00	1166.14	11	106.01	104.03
8-18-62	117.80	111.00	109.54	104.92	119.25	107.41	100.00	2243.73	20	112.19	108.17
8-25-62	120.54	126.67	103.96	102.75	114.25	110.16	145.50	2354.48	20	117.72	111.87
9-1-62	123.64	110.77	105.81	103.70	115.21	104.32	139.33	2350.87	20	117.54	111.75
9-8-62	126.37	100.00	108.60	102.47	111.23	107.03	161.56	2416.48	20	120.82	113.95
9-15-62	119.93	100.00	107.29	103.72	113.23	105.36	100.00	2233.03	20	111.65	107.81
9-22-62	118.10	100.00	107.22	104.91	124.07	107.26	114.30	2261.57	20	113.08	108.76
		Straight Average 3rd Quarter - 1962									108.52%

Exhibit 2A Attached to Defendant Bethlehem Steel Corporation's Answer to Interrogatories.

Exhibit 2A Attached to Defendant Bethlehem Steel Corporation's Answer to Interrogatories.

[BETHLEHEM STEEL CORPORATION]
- Lackawanna Plant -

Continuous Sheet, Strip & Plate Mills - Mechanical & Electrical Maintenance - History of Performance

Percent Performance Contribution to Maintenance Plan

Wk. Ending	Hot Mill Presser	Hot Mill Shipping	Cont. Picklers #1-2-3	58"-75" Tandem Mills	Annealing	Skin Mills #2-3-5	Cold Mill Shipping	Total Factored Performance	No. of Factors	Average Factored Performance	Maintenance Performance
Factor	9	1	3	2	1	2	2				
9-29-62	121.53%	100.00%	110.30%	109.70%	113.18%	107.47%	107.70%	2287.58%	20	114.38%	109.63%
10-6-62	127.83	102.73	109.91	109.30	115.92	107.80	123.25	2372.33	20	118.62	112.88
10-13-62	128.30	100.00	112.99	107.51	114.47	106.87	107.09	2296.68	20	114.83	109.94
10-20-62	118.98	100.00	106.86	104.20	115.97	111.09	128.75	2293.65	20	114.68	109.84
10-27-62	117.57	100.00	107.90	105.34	118.92	109.56	134.82	2300.19	20	115.01	110.06
11-3-62	120.69	110.26	111.29	107.34	119.90	113.40	128.79	2348.54	20	117.43	111.68
11-10-62	122.31	100.00	113.88	107.78	119.45	110.09	130.33	2356.48	20	117.82	111.94
11-17-62	122.75	100.00	109.37	105.24	120.87	114.43	121.46	2335.99	20	116.80	111.26
11-24-62	122.55	100.00	109.88	106.14	118.70	113.71	115.31	2321.61	20	116.08	110.77
12-1-62	126.68	100.00	103.87	107.96	119.16	110.38	124.75	2356.53	20	117.83	111.95
12-8-62	121.69	100.00	108.34	106.35	116.01	109.26	102.50	2272.46	20	113.62	108.13
12-15-62	123.53	100.00	105.86	104.09	117.30	106.91	102.73	2274.11	20	113.70	109.00
12-22-62	118.83	100.00	108.00	103.18	122.86	106.73	136.15	2308.45	20	115.42	110.33
											110.62%
Straight Average 4th Quarter - 1962											
12-29-62	114.53%	100.00%	105.36%	103.42%	118.29%	106.92%	122.10%	2230.02%	20	111.50%	107.71%
1-5-63	118.93	108.00	106.68	101.76	123.21	106.17	140.75	2318.98	20	115.95	110.69
1-12-63	132.97	100.00	106.67	104.40	123.02	107.24	128.62	2420.28	20	121.01	114.08
1-19-63	122.37	100.00	110.26	102.38	119.83	107.36	107.17	2285.76	20	114.29	109.57
1-26-63	119.98	100.00	105.41	101.46	128.95	106.75	100.00	2241.42	20	112.07	108.09
2-2-63	120.68	100.00	103.99	103.90	122.18	107.31	107.67	2252.63	20	112.63	108.46
2-9-63	128.99	100.00	106.49	102.66	120.68	106.76	131.54	2310.98	20	115.55	110.42
2-16-63	118.79	100.00	105.79	103.43	120.44	110.27	119.31	2272.94	20	113.65	109.15
2-23-63	117.38	100.00	103.93	104.72	118.46	108.07	111.08	2234.41	20	111.72	107.85
3-2-63	120.04	100.00	105.62	104.45	121.65	108.43	104.42	2245.47	20	112.27	108.22
3-9-63	124.65	100.00	104.01	109.29	129.85	107.72	119.86	2327.47	20	116.37	110.97
3-16-63	127.62	100.00	106.03	106.99	120.98	106.72	110.07	2335.21	20	116.76	111.23
3-23-63	123.62	100.00	106.73	107.30	117.05	107.94	125.62	2331.52	20	116.58	111.11
											109.81%
Straight Average 1st Quarter - 1963											

BETHLEHEM STEEL CORPORATION

- Lackawanna Plant -

Continuous Sheet, Strip & Plate Mills - Mechanical and Electrical Maintenance - History of Performance

Percent Performance Contribution to Maintenance Plan

Mo. Ending / Factor	Hot Mill Proper 9	Hot Mill Shipping 1	Continuous Picklers #1-2-3 3	54"-75" Tandem Mills 2	Annealing 1	Skin Mills #2-3-5 2	Cold Mill Shipping 2	Total Factored Performance	No. of Factors	Average Factored Performance	Maintenance Performance
2-28-63	123.73%	100.00%	107.08%	107.08%	119.55%	108.93%	112.85%	2311.90%	20	115.60%	110.45%
3-7-63	125.81	100.00	106.01	106.43	119.91	108.76	127.93	2356.47	20	117.82	111.94
3-14-63	128.15	100.00	107.17	105.89	120.58	110.11	128.93	2377.30	20	118.87	112.68
3-21-63	124.74	100.00	104.37	106.25	118.16	105.23	137.79	2352.47	20	117.62	111.81
3-28-63	131.97	100.00	112.60	114.00	116.36	107.68	153.86	2492.97	20	124.65	116.52
4-4-63	118.10	100.00	113.97	109.48	124.13	109.58	117.29	2301.64	20	115.08	110.10
4-11-63	125.91	100.00	111.24	109.34	121.61	111.66	116.89	2364.30	20	118.22	112.21
4-18-63	122.95	100.00	111.67	108.02	120.15	108.42	105.26	2305.11	20	115.26	110.22
4-25-63	118.52	100.00	116.75	109.84	123.28	108.09	126.89	2329.85	20	116.49	111.05
5-2-63	128.18	100.00	114.91	107.19	117.39	110.09	100.00	2350.30	20	117.52	111.74
5-9-63	113.54	100.00	109.72	108.11	117.84	108.28	116.65	2234.94	20	111.75	107.87
5-16-63	124.99	100.00	112.28	104.53	121.56	106.72	114.70	2335.21	20	116.76	111.23
5-23-63	116.08	100.00	112.78	110.11	117.32	106.45	100.55	2234.60	20	111.73	107.86
		Straight Average - 2nd Quarter - 1963									111.80%
6-30-63	121.18%	100.00%	109.56%	107.51%	118.94%	108.85%	100.00%	2270.96%	20	113.55%	109.08%
7-6-63	114.11	100.00	104.91	104.97	115.34	108.77	100.00	2184.54	20	109.23	106.18
7-13-63	119.65	100.00	115.76	103.91	119.77	108.44	122.57	2259.74	20	112.99	108.70
7-20-63	116.34	103.67	108.69	104.01	119.04	105.37	125.79	2266.18	20	113.31	108.92
7-27-63	120.16	100.00	108.11	101.99	120.17	103.77	114.36	2266.18	20	113.31	108.92
8-3-63	117.32	101.80	106.55	102.83	118.47	103.60	109.83	2228.32	20	111.42	107.65
8-10-63	118.51	100.00	111.63	103.98	115.49	105.24	110.83	2257.07	20	112.85	108.61
8-17-63	110.50	113.33	107.81	107.51	114.79	107.11	116.75	2208.79	20	110.44	106.99
8-24-63	116.31	102.33	117.08	108.34	120.05	105.44	100.00	2228.31	20	111.42	107.65
8-31-63	112.86	104.70	107.30	104.30	119.97	109.33	100.00	2189.57	20	109.48	106.35
9-7-63	113.42	100.00	109.81	107.91	120.07	107.83	100.00	2201.76	20	110.09	106.76
9-14-63	118.74	100.00	112.67	104.45	120.56	108.83	100.45	2254.69	20	112.74	108.54
9-21-63	115.88	100.00	117.80	110.90	119.10	108.69	100.00	2254.60	20	112.73	108.53
		Straight Average - 3rd Quarter - 1963									107.91%

Exhibit 2A Attached to Defendant Bethlehem Steel Corporation's Answer to Interrogatories.

Exhibit 2A Attached to Defendant Bethlehem Steel Corporation's Answer to Interrogatories.

BETHLEHEM STEEL CORPORATION

- Lackawanna Plant -

Continuous Sheet, Strip & Plate Mills - Mechanical and Electrical Maintenance - History of Performance

	Percent Performance Contribution to Maintenance Plan										
Wk. Ending Pastor	Hot Mill Proper 9	Hot Mill Shipping 1	Continuous Pickler #1-2-3 3	45"-75" Tandem Mills 2	Annealing 1	Skin Mills #2-3-5 2	Cold Mill Shipping 2	Total Factored Performance	No. of Factors	Average Factored Performance	Maintenance Performance
3-28-64	116.38%	100.00%	113.89%	110.75%	117.26%	110.30%	119.00%	2285.73%	20	114.29%	109.57%
4-4-64	121.37	100.00	117.86	111.83	118.55	106.79	124.21	2346.52	20	117.33	111.61
4-11-64	123.17	100.00	114.43	107.40	118.81	108.92	123.57	2358.41	20	117.92	111.74
4-18-64	121.29	100.00	114.51	108.26	119.91	107.52	144.89	2375.19	20	118.76	112.57
4-25-64	112.57	109.87	115.43	111.92	119.69	105.56	129.07	2282.08	20	114.10	109.45
5-2-64	123.12	114.40	118.85	108.97	118.89	105.20	114.89	2346.84	20	117.34	111.49
5-9-64	119.02	100.00	115.18	105.84	120.85	103.70	123.64	2303.93	20	115.20	110.18
5-16-64	120.50	101.44	115.35	106.65	118.63	105.21	124.36	2323.86	20	116.15	110.82
5-23-64	119.86	100.00	110.89	109.59	117.52	107.32	124.97	2303.87	20	115.19	110.18
5-30-64	119.87	101.19	107.61	106.79	119.48	105.40	127.22	2301.35	20	115.06	110.09
6-6-64	118.51	105.21	108.65	107.88	117.91	105.52	129.80	2300.46	20	115.02	110.06
6-13-64	118.99	116.33	108.46	105.82	118.68	106.02	123.79	2306.52	20	115.33	110.27
6-20-64	118.39	100.00	111.06	107.68	118.62	108.94	137.50	2324.95	20	116.25	110.89
		Straight Average 2nd Quarter - 1964									110.70%
6-27-64	119.06%	111.28%	105.40%	105.85%	116.19%	107.10%	110.86%	2262.83%	20	113.14%	108.80%
7-4-64	115.80	91.86	106.38	107.31	117.84	110.40	100.58	2206.62	20	110.33	106.92
7-11-64	115.54	100.00	106.83	106.60	117.38	109.84	136.64	2284.85	20	114.24	109.51
7-18-64	118.18	100.00	110.01	106.84	118.58	108.63	113.14	2268.85	20	113.44	109.80
7-25-64	112.84	100.00	108.47	104.15	116.35	107.18	105.64	2185.86	20	109.29	106.22
8-1-64	113.46	100.00	109.87	106.83	118.79	107.62	100.00	2196.24	20	109.81	106.57
8-8-64	120.89	100.46	106.83	105.68	120.19	108.98	110.35	2278.72	20	113.94	109.34
8-15-64	123.63	100.00	110.55	106.64	119.24	106.19	108.60	2306.32	20	115.32	110.26
8-22-64	122.97	104.76	110.82	104.81	118.18	109.49	141.75	2374.23	20	118.71	112.54
8-29-64	113.82	100.00	113.16	104.76	117.37	106.88	124.88	2245.47	20	112.27	108.22
9-5-64	119.25	100.00	110.73	106.08	115.80	108.83	150.58	2357.16	20	117.86	111.97
9-12-64	123.89	100.00	118.99	105.80	117.88	109.30	134.00	2370.86	20	118.54	112.48
9-19-64	123.88	100.00	114.92	109.61	120.15	108.85	152.43	2421.61	20	121.08	114.32
		Straight Average 3rd Quarter - 1964									109.68%

Exhibit 2A Attached to Defendant Bethlehem Steel Corporation's Answer to Interrogatories.

BETHLEHEM STEEL CORPORATION
- Lackawanna Plant -

Sheet 10 of 14

Continuous Sheet, Strip & Plate Mills - Mechanical & Electrical Maintenance - History of Performance

Foreign Performance Contribution to Maintenance Plan

Wk. Ending	Hot Mill Proper	Hot Mill Shipping	Cont. Picklers #1-2-3	54"-75" Tandem Mills	Annealing	Skin Mills #2-3-5	Cold Mill Shipping	Total Factored Performance	No. of Factors	Average Factored Performance	Maintenance Performance
Factor	9	1	3	2	1	2	2				
9-26-64	118.89%	100.00%	112.65%	107.45%	117.76%	112.06%	140.84%	2346.46%	20	117.32%	111.60%
10-3-64	121.63	100.00	113.66	112.50	118.17	111.77	138.00	2378.36	20	118.92	112.68
10-10-64	124.85	107.60	106.43	106.16	117.86	108.61	100.00	2297.94	20	114.90	109.98
10-17-64	119.30	100.00	108.20	108.92	118.65	107.57	100.00	2249.93	20	112.50	108.38
10-24-64	121.69	100.00	105.52	109.27	114.34	104.95	100.00	2254.55	20	112.73	108.53
10-31-64	117.36	100.00	117.13	108.70	114.59	108.49	100.00	2256.60	20	112.83	108.60
11-7-64	117.97	100.00	113.54	108.79	114.97	109.52	115.11	2284.16	20	114.21	109.52
11-14-64	122.81	100.00	118.45	107.67	114.95	108.20	115.85	2321.03	20	116.05	110.75
11-21-64	124.53	100.00	115.55	104.74	112.17	107.07	105.40	2314.81	20	115.70	110.52
11-28-64	119.87	100.00	119.08	106.28	112.26	108.31	105.05	2287.61	20	114.38	109.63
12-5-64	121.80	100.00	109.66	105.62	112.12	112.69	114.30	2302.52	20	115.13	110.14
12-12-64	119.70	100.00	119.54	105.90	118.27	113.00	117.25	2326.49	20	116.32	110.93
12-19-64	119.40	100.00	117.45	103.95	120.35	116.01	116.14	2319.50	20	115.98	110.71
12-26-64	113.78	100.00	116.13	105.38	117.49	114.37	110.76	2250.94	20	112.55	108.41
		Straight Average 4th Quarter - 1964									110.03%
1-2-65	116.01%	100.00%	114.60%	103.75%	119.71%	111.76%	107.33%	2253.28%	20	112.66%	108.48%
1-9-65	120.50	100.00	122.12	104.50	115.24	112.84	101.24	2303.26	20	115.16	110.16
1-16-65	122.25	100.00	122.30	108.56	117.48	112.80	118.86	2365.07	20	118.25	112.23
1-23-65	118.02	100.00	115.85	107.11	119.66	112.75	106.35	2281.81	20	114.09	109.44
1-30-65	116.61	100.00	126.30	105.84	119.24	112.79	115.58	2316.05	20	115.80	110.59
2-6-65	118.88	100.00	123.37	104.96	117.88	108.89	100.00	2285.61	20	114.28	109.57
2-13-65	123.20	100.00	125.90	105.26	117.23	108.73	110.29	2352.29	20	117.61	111.80
2-20-65	122.85	100.00	123.98	106.80	116.79	108.57	119.14	2358.80	20	117.90	111.99
2-27-65	122.15	100.00	124.16	107.63	118.56	109.14	101.95	2327.83	20	116.39	110.98
3-6-65	125.05	107.90	118.32	108.30	120.01	112.91	109.80	2370.34	20	118.52	112.41
3-13-65	120.71	100.00	124.57	106.64	119.61	109.31	115.75	2313.11	20	115.66	110.49
3-20-65	128.77	100.00	115.39	105.24	117.63	110.27	117.95	2389.65	20	119.48	113.05
		Straight Average 1st Quarter - 1965									110.93%

[redacted] - Bethlehem Plant -

Continuous Sheet, Strip & Plate Mills - Mechanical & Electrical Maintenance - History of Performance

Percent Performance Contribution to Maintenance Plan

Wk. Ending	Hot Mill Proper	Hot Mill Shipping	Cont. Picklers #1-2-3	58"-75" Tandem Mills	Annealing	Skin Mills #2-3-5	Cold Mill Shipping	Total Factored Performance	No. of Factors	Average Factored Performance	Maintenance Performance
Factor	9	1	3	2	1	2	2				
3-27-65	126.76	100.00	125.18	110.02	116.9%	107.68	116.05	2400.82	20	120.0%	113.43
4-3-65	123.69	100.00	119.82	105.93	116.81	106.98	107.14	2329.58	20	116.48	111.0%
4-10-65	120.82	100.00	120.90	107.27	116.95	110.72	104.15	2311.31	20	115.57	110.43
4-17-65	122.42	100.00	126.80	106.58	116.68	111.51	123.25	2381.5%	20	119.08	112.78
4-24-65	122.71	100.00	129.38	105.61	118.95	113.06	134.43	2417.68	20	120.88	113.99
5-1-65	119.85	100.00	124.36	105.04	119.41	112.00	141.95	2389.12	20	119.46	113.04
5-8-65	125.06	100.00	124.13	104.40	120.79	116.80	102.40	2365.92	20	118.30	112.26
5-15-65	123.34	100.00	119.60	102.87	117.84	113.03	117.35	2353.20	20	117.66	111.83
5-22-65	123.59	100.00	119.25	104.97	115.47	111.23	100.88	2319.69	20	115.98	110.71
5-29-65	113.97	100.00	120.17	109.25	117.97	111.58	111.00	2267.8%	20	113.39	108.97
6-5-65	121.38	100.00	124.16	106.10	116.14	133.78	100.00	2360.80	20	118.04	112.09
6-12-65	114.53	100.00	116.05	105.17	121.92	112.92	131.71	2300.44	20	115.02	110.06
6-19-65	121.13	100.00	126.01	104.59	118.46	115.61	154.50	2436.06	20	121.80	114.61
		Straight Average 2nd Quarter - 1965									111.9%
6-26-65	122.16%	100.00%	114.21%	105.72%	117.00%	111.26%	122.41%	2337.85%	20	116.89%	111.38%
7-3-65	123.20	100.00	117.87	102.99	117.64	114.58	100.00	2315.19	20	115.76	110.56
7-10-65	115.58	100.00	112.83	104.84	116.86	115.16	123.56	2282.69	20	114.13	109.47
7-17-65	117.40	100.00	121.16	107.53	117.15	108.87	116.42	2302.87	20	115.14	110.14
7-24-65	119.62	100.00	119.98	104.32	116.86	110.31	100.05	2282.74	20	114.14	109.47
7-31-65	116.24	100.00	110.38	103.82	109.22	105.39	106.30	2217.54	20	110.88	107.29
8-7-65	114.49	100.00	111.79	102.85	117.26	105.05	113.01	2224.86	20	111.24	107.53
8-14-65	112.96	100.00	112.48	103.24	118.19	110.53	118.00	2235.81	20	111.79	107.90
8-21-65	114.55	100.00	125.90	102.47	115.10	115.14	120.80	2300.57	20	115.03	110.07
8-28-65	115.01	100.00	118.69	102.74	118.28	109.50	124.05	2282.02	20	114.10	109.45
9-4-65	117.24	100.00	116.85	103.47	116.90	110.41	100.00	2250.37	20	112.52	108.39
9-11-65	110.80	100.00	118.31	102.23	119.43	111.01	100.00	2198.04	20	109.90	106.63
9-18-65	117.01	100.00	119.38	101.45	119.62	107.95	122.75	2295.15	20	114.76	109.89
		Straight Average 3rd Quarter - 1965									109.09%

Exhibit 2A Attached to Defendant Bethlehem Steel Corporation's Answer to Interrogatories.

[BETHLEHEM STEEL CORPORATION]
- Lackawanna Plant -

Continuous Sheet, Strip & Plate Mills - Mechanical & Electrical Maintenance - History of Performance

	Percent Performance Contribution to Maintenance Plan										
Wk. Ending	Hot Mill Proper	Hot Mill Shipping	Cont. Picklers #1-2-3	54"-75" Tandem Mills	Annealing	Skin Mills #2-3-5	Cold Mill Shipping	Total Factored Performance	No. of Factors	Average Factored Performance	Maintenance Performance
Factor	9	1	3	2	1	2	2				
9-25-65	117.32%	100.00%	121.99%	112.27%	118.01%	109.06%	120.91%	2324.34%	20	116.22%	110.87%
10-2-65	113.06	100.00	119.73	105.75	117.23	108.34	115.36	2252.86	20	112.64	108.47
10-9-65	114.88	100.00	123.20	102.61	118.01	108.45	103.92	2251.49	20	112.57	108.42
10-16-65	112.00	100.00	122.61	103.00	120.07	105.01	100.00	2211.92	20	110.60	107.10
10-23-65	113.87	100.00	123.52	103.04	122.72	106.12	100.00	2236.43	20	111.82	107.92
10-30-65	113.83	125.29	124.12	100.49	117.68	110.94	100.00	2262.66	20	113.13	108.80
11-6-65	111.76	112.83	126.60	102.03	116.14	107.50	108.90	2251.47	20	112.57	108.42
11-13-65	120.14	133.40	124.56	101.64	115.43	105.51	118.42	2354.91	20	117.75	111.89
11-20-65	118.40	117.40	126.50	101.40	116.99	109.24	100.91	2302.59	20	115.13	110.14
11-27-65	108.51	112.80	127.04	101.25	117.96	107.40	100.00	2205.77	20	110.29	106.89
12-4-65	105.26	118.88	133.35	103.99	116.65	107.68	100.00	2206.26	20	110.31	106.91
12-11-65	108.40	108.10	127.56	101.66	116.26	108.70	115.90	2235.16	20	111.75	107.87
12-18-65	104.45	109.00	120.73	101.81	119.95	109.53	100.00	2153.87	20	107.69	105.15
12-25-65	121.58	100.00	121.76	102.13	119.21	107.24	100.00	2297.45	20	114.87	109.96
		Straight Average 4th Quarter - 1965									108.49%
1-1-66	121.58%	111.56%	128.00%	100.17%	119.31%	108.39%	100.00%	2326.21%	20	116.31%	110.93%
1-8-66	121.58	111.90	127.92	101.50	116.49	110.42	100.00	2330.21	20	116.51	111.06
1-15-66	121.58	118.09	136.68	101.11	115.35	111.60	133.10	2429.32	20	121.47	114.38
1-22-66	121.58	100.00	139.51	102.52	116.06	106.02	137.60	2421.09	20	121.05	114.10
1-29-66	121.58	100.00	122.43	103.49	116.76	110.97	139.70	2386.59	20	119.33	112.95
2-5-66	121.58	100.00	122.23	101.16	116.68	107.63	117.58	2330.13	20	116.51	111.06
2-12-66	121.58	100.00	131.67	103.61	117.07	106.07	137.83	2401.32	20	120.07	113.45
2-19-66	121.58	117.08	136.08	104.97	119.41	110.42	145.75	2461.23	20	123.06	115.45
2-26-66	122.18	118.64	126.40	103.91	118.23	110.18	155.01	2453.89	20	122.69	115.20
3-5-66	121.78	114.17	130.68	105.59	120.33	112.21	146.38	2450.92	20	122.55	115.11
3-12-66	117.49	100.00	129.60	104.80	120.71	109.11	121.71	2338.16	20	116.91	111.33
3-19-66	123.67	100.00	141.61	108.91	119.93	109.15	128.71	2451.33	20	122.57	115.12
		Straight Average 1st Quarter - 1966									113.37%

Exhibit 2A Attached to Defendant Bethlehem Steel Corporation's Answer to Interrogatories.

BETHLEHEM STEEL CORPORATION
- Lackawanna Plant -

Continuous Sheet, Strip & Plate Mills - Mechanical & Electrical Maintenance - History of Performance

Percent Performance Contribution to Maintenance Plan

Wk. Ending	Hot Mill Proper	Hot Mill Shipping	Cont. Pickler (1-2-)	52"-75" Tandem Mills	Annealing	Skin Mills (2-3-5	Cold Mill Shipping	Total Filtered Performance	No. of Factors	Average Factored Performance	Maintenance Performance
Factor	9	1	3	2	1	2	2				
3-26-66	122.08%	100.00%	127.79%	108.45%	117.91%	109.13%	113.78%	2362.42%	20	118.12%	112.1%
4-2-66	126.07	103.00	140.11	104.20	117.28	110.72	111.82	2428.72	20	121.44	114.36
4-9-66	126.89	100.00	141.17	107.13	120.33	115.88	115.59	2469.05	20	123.15	115.51
4-16-66	127.82	113.08	139.66	104.81	122.29	110.54	132.97	2501.37	20	125.07	116.80
4-23-66	123.57	123.40	131.96	105.34	118.05	109.01	104.85	2387.50	20	119.38	112.98
4-30-66	116.95	106.46	133.58	108.25	118.52	111.19	107.05	2331.27	20	116.56	111.10
5-7-66	119.44	116.66	132.65	109.38	119.70	114.79	121.65	2400.91	20	120.05	113.43
5-14-66	122.09	100.00	142.19	111.09	120.85	115.17	113.77	2426.29	20	121.31	114.38
5-21-66	123.12	100.00	133.85	109.90	117.12	113.91	125.71	2426.33	20	121.32	114.28
5-28-66	118.08	100.00	133.65	107.87	118.66	117.50	114.35	2361.77	20	118.09	112.12
6-4-66	111.58	121.80	131.42	104.04	119.37	118.29	106.59	2297.49	20	114.87	109.96
6-11-66	112.56	100.00	120.14	114.06	125.00	110.68	115.00	2277.94	20	113.90	109.32
6-18-66	112.[illegible]	105.23	124.46	109.70	118.86	117.45	151.56	2363.34	20	118.17	112.17
		Straight Average 2nd Quarter - 1966									112.96%
6-25-66	118.61%	104.33%	128.08%	108.17%	121.06%	106.90%	123.08%	2353.56%	20	117.68%	111.85%
7-2-66	110.24	100.00	127.56	104.59	121.65	109.34	102.67	2229.69	20	111.48	107.69
7-9-66	121.43	135.20	135.09	110.37	121.44	111.42	155.20	2508.76	20	125.44	117.08
7-16-66	119.19	103.69	126.56	109.56	120.92	114.44	120.59	2366.18	20	118.31	112.27
7-23-66	118.26	119.71	126.26	111.70	119.74	112.09	94.82	2318.99	20	115.95	110.69
7-30-66	113.21	110.29	124.46	105.68	120.44	107.45	115.92	2281.10	20	114.06	109.42
8-6-66	116.88	106.25	134.89	107.69	120.40	108.78	121.42	2359.02	20	117.95	112.03
8-13-66	115.00	104.50	130.98	105.82	117.86	112.98	127.75	2343.60	20	117.17	111.50
8-20-66	117.44	108.02	125.05	107.68	119.15	110.14	129.58	2354.08	20	117.70	111.86
8-27-66	114.56	100.00	127.98	105.34	119.05	106.98	112.08	2282.83	20	114.14	109.47
9-3-66	112.51	100.00	125.77	106.27	117.69	111.29	121.17	2285.05	20	114.25	109.55
9-10-66	117.44	137.94	127.24	108.20	121.48	112.94	136.58	2413.54	20	120.68	113.86
9-17-66	118.52	115.37	118.77	105.50	119.54	115.72	143.25	2386.84	20	119.34	112.96
9-24-66	118.04	100.00	129.74	107.09	119.01	115.95	153.58	2423.83	20	121.19	114.20
		Straight Average 3rd Quarter - 1966									111.71%

Exhibit 2A Attached to Defendant Bethlehem Steel Corporation's Answer to Interrogatories.

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BETHLEHEM STEEL CORPORATION
- Lackawanna Plant -

Sheet 14 of 14

Continuous Sheet, Strip & Plate Mills - Mechanical & Electrical Maintenance - History of Performance

Percent Performance Contribution to Maintenance Plan

Wk. Ending	Hot Mill Proper	Hot Mill Shipping	Cont. Picklers #1-2-3	54"-75" Tandem Mills	Annealing	Skin Mills #2-3-5	Cold Mill Shipping	Total Factored Performance	No. of Factors	Average Factored Performance	Maintenance Performance
Factor	9	1	3	2	1	2	2				
10-1-66	114.8%	103.3%	124.4%	105.86%	120.10%	111.38%	132.25%	2329.24%	20	116.46%	111.03%
10-8-66	117.22	115.81	126.85	105.83	118.03	112.90	136.00	2378.83	20	118.94	112.69

Exhibit 2B Attached to Defendant Bethlehem Steel Corporation's Answer to Interrogatories.

BETHLEHEM STEEL CORPORATION
- Lackawanna Plant -

Continuous Sheet, Strip and Plate Mills - Mechanical and Electrical Maintenance - Errors on History of Performance Chart

Week Ending	Total Factored Performance		Average Factored Performance		Maintenance Performance		Maintenance Performance Straight Quarterly Average	
	Posted	Corrected	Posted	Corrected	Posted	Corrected	Posted	Corrected
12-3-60					107.39	106.88		
12-10-60	1057.08	1055.58						
Straight Average 4th Quarter - 1960							105.99	105.85
11-4-61	2285.53	2283.53	114.28	114.18	109.57	109.50		
12-2-61	2392.58	2400.56	120.02	120.03	113.41	113.42		
Straight Average 4th Quarter - 1961							111.34	111.33
3-3-62	2321.95	2323.57	116.10	116.18	110.79	110.84		
4-28-62			106.94	110.09	104.65	106.76		
Straight Average 2nd Quarter - 1962							106.05	106.21
6-30-62	2180.76	2181.06	109.04	109.05				
8-24-63	2228.31	2247.97	111.42	112.40	107.65	108.31		
Straight Average 3rd Quarter - 1963							107.91	107.96
7-4-64	2206.62 ß	2214.76	110.33	110.74	106.92	107.20		
9-5-64	2357.16	2350.86	117.86	117.54	111.97	111.75		
Straight Average 3rd Quarter - 1964							109.68	109.69
4-30-66	2331.87	2332.25						
7-23-66	2318.99*	2330.25	115.95	116.51	110.69	111.06		
Straight Average 3rd Quarter - 1966							111.74	111.77

ß Total factored performance in error due to the use of 91.86 instead of 100.00% as the performance of Hot Mill Shipping.
* Total Factored Performance in error due to the use of 94.42% instead of 100.00% as the performance of Cold Mill Shipping.

Exhibit 2B

BETHLEHEM STEEL CORPORATION

Lackawanna Plant

Cont. Sheet, Strip & Plate Mills - Mechanical Maintenance - History of Position S.H.W.R. for Incentive Purposes

Position	Standard Hourly Wage Rate (S.H.W.R.) S.H.W.R. as of 4-17-60	S.H.W.R. as of 12-1-60	S.H.W.R. as of 10-1-61
General to Hot & Cold Mills			
Millwright (Millwright "A")	$2.764	$2.858	$2.940
Mech. Repairman "A" (Millwright "B")	2.630	2.720	2.800
Mech. Repairman "B" (Millwright "C")	2.496	2.582	2.660
Mech. Repairman "C"	2.362	2.444	2.520
Mechanical Helper	2.228	2.306	2.380
Welder "A"	2.764	2.858	2.940
Welder "B"	2.630	2.720	2.800
Welder "C"	2.496	2.582	2.660
Storekeeper - Shop	2.027	2.099	2.170
Tractor Operator	2.295	2.375	2.450
Oiler & Greaser Leader	2.630	2.720	2.800
Oil System Man	2.496	2.582	2.660
Oil System Man Helper	2.228	2.306	2.380
Oiler and Greaser	2.228	2.306	2.380
Oiler and Greaser Helper	2.094	2.168	2.240

Position	Standard Hourly Wage Rate (S.H.W.R.) S.H.W.R. as of 4-17-60	S.H.W.R. as of 12-1-60	S.H.W.R. as of 10-1-61
General to Hot & Cold Mills			
Bearing Machinist	$2.831	$2.927	$3.010
Bearing Mach. - Handyman	2.295	2.375	2.450
Bearing Repair Helper	2.228	2.306	2.380
Bearing Changer Machine Operator	2.228	2.306	2.380
Bearing Changer	2.362	2.444	2.520
Bearing Changer Helper	2.161	2.237	2.310
Roll Bearing Washer	1.960	2.030	2.100
Shear Blade Supplyman	2.429	2.513	2.590
Shear Blade Supplyman Helper	2.094	2.168	2.240
Rubber Vulcanizer	2.563	2.651	2.730
Automotive Maintenance			
Automotive Mechanic	2.764	2.858	2.940
Automotive Repairman "A"	2.630	2.720	2.800
Automotive Repairman "B"	2.496	2.582	2.660

Exhibit 3A

Exhibit 3A Attached to Defendant Bethlehem Steel Corporation's Answer to Interrogatories.

BETHLEHEM STEEL CORPORATION

Lackawanna Plant

Cont. Sheet, Strip & Plate Mills - Mechanical Maintenance - History of Position S.H.W.R. for Incentive Purposes

Position	Standard Hourly Wage Rate (S.H.W.R.) S.H.W.R. as of 4-17-60	S.H.W.R. as of 12-1-60	S.H.W.R. as of 10-1-61
Automotive Maintenance (Cont'd)			
Automotive Repairman "C"	$2.362	$2.444	$2.520
Automotive Repairman Helper	2.161	2.237	2.310
Automotive Greaser	2.161	2.237	2.310
Machine Shop			
Craneman	2.362	2.444	2.520
Machinist Leader	3.032	3.134	3.220
Machinist "A"	2.898	2.996	3.080
Machinist "B"	2.764	2.858	2.940
Machinist "C"	2.630	2.720	2.800
Machinist Helper	2.161	2.237	2.310
Shear Blade Grinder	2.295	2.375	2.450
Rotary Surface Grinder	2.295	2.375	2.450
Machine Operator "A"	2.496	2.582	2.660
Machine Operator "B"	2.362	2.444	2.520
Machine Operator "C"	2.228	2.306	2.380
(Millwright "A")	-	-	2.904*
Mech. Repairman "A" (Millwright "B")	2.630	2.720	2.800
Mech. Repairman "B" (Millwright "C")	2.496	2.582	2.660
Mech. Repairman "C"	2.362	2.444	2.520
Blacksmith "A"	2.831	2.927	3.010
Blacksmith "B"	2.697	2.789	2.870
Blacksmith "C"	2.563	2.651	2.730
Blacksmith Helper	2.228	2.306	2.380

Note: Positions in parenthese are those created by craft changes (1-1-66).

* Position effective as of 1-1-66 due to craft changes.

Note: S.H.W.R. resulting from General Wage Increase of 9-1-65 is not shown since "S.H.W.R. for Incentive Purposes" remained the same as S.H.W.R. of 10-1-61.

Exhibit 3A Attached to Defendant Bethlehem Steel Corporation's Answer to Interrogatories.

BETHLEHEM STEEL CORPORATION

Lackawanna Plant

Cont. Sheet, Strip & Plate Mills - Electrical Maintenance - History of Position S.H.W.R. for Incentive Purposes

Position	Standard Hourly Wage Rate (S.H.W.R.) S.H.W.R. as of 4-17-60	S.H.W.R. as of 12-1-60	S.H.W.R. as of 10-1-61
Motor Room Operator	2.764	2.858	2.940
Motor Room Attendant "A"	2.630	2.720	2.800
Motor Room Attendant "B"	2.496	2.582	2.660
Motor Room Attendant "C"	2.362	2.444	2.520
Motor Room Attendant Helper	2.228	2.306	2.380
Crane Millwright (Millwright "A")	2.764	2.858	2.940
Crane Repair. "A"(Millwright "B")	2.630	2.720	2.800
Crane Repair. "B"(Millwright "C")	2.496	2.582	2.660
Crane Repairman "C"	2.362	2.444	2.520
Crane Repairman Helper	2.228	2.306	2.380
Crane Oiler	2.228	2.306	2.380
Motor Inspector (Motor Insp. "A")	2.764	2.858	2.940
Elect. Rep. "A" (Motor Insp. "B")	2.630	2.720	2.800
Elect. Rep. "B" (Motor Insp. "C")	2.496	2.582	2.660
Elect. Repairman "C"	2.362	2.444	2.520
Electrical Helper	2.228	2.306	2.380
Electrical Oiler	2.228	2.306	2.380
Automotive Mechanic	-	-	2.940*

Note: Positions in parentheses are those created by Craft Changes (1-1-66)

* Position effective as of 1-1-66.

Note: S.H.W.R. resulting from General Wage Increase of 9-1-65 is not shown since "S.H.W.R. for Incentive Purposes" remained the same as S.H.W.R. of 10-1-61.

Exhibit 3B

BETHLEHEM STEEL CORPORATION
- Lackawanna Plant -

Sheet 1 of 4

Cont. Sheet, Strip & Plate Mills - Mechanical Maintenance - History of Incentive Adjustment Changes

Representative Test Period

7-5-59 to 1-30-60 excluding weeks ending 7-18-59 through 11-7-59 due to strike.

Position	Earnings Old Plan	Earnings New Plan	Code:- Date of Change:-	Incentive Adjustment "A" 4-17-60	"B" 12-1-60	"C" 5-7-61	"D" 10-1-61	"E" 6-10-62	"F" 1-1-66
General to Hot & Cold Mills									
Millwright (Millwright "A")	$3.261	$3.090		.171	.177	.171	.176	.165	.165
Mech. Repairman "A" (Millwright "B")	3.090	2.940		.150	.155	.149	.153	.144	.144
Mech. Repairman "B" (Millwright "C")	2.919	2.791		.128	.132	.127	.131	.122	.122
Mech. Repairman "C"	2.743	2.641		.102	.106	.101	.104	.095	- *
Mechanical Helper	2.594	2.491		.103	.107	.102	.105	.096	.096
Welder "A"	3.261	3.090		.171	.177	.171	.176	.165	.165
Welder "B"	3.090	2.940		.150	.155	.149	.153	.144	.144
Welder "C"	2.919	2.791		.128	.132	.127	.131	.122	.122
Storekeeper - Shop	2.334	2.266		.068	.070	.066	.068	.060	.060
Tractor Operator	2.658	2.566		.092	.095	.091	.094	.085	.085
Oiler & Greaser Leader	3.090	2.940		.150	.155	.149	.153	.144	.144
Oil System Man	2.919	2.791		.128	.132	.127	.131	.122	.122
Oil System Man Helper	2.585	2.491		.094	.097	.093	.096	.087	.087
Oiler and Greaser	2.661	2.471		.170	.176	.172	.178	.167	.167
Oiler and Greaser Helper	2.421	2.341		.080	.083	.079	.082	.072	.072

Exhibit 4A

Exhibit 4A Attached to Defendant Bethlehem Steel Corporation's Answer to Interrogatories.

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BETHLEHEM STEEL CORPORATION
- Lackawanna Plant -

Cont. Sheet, Strip & Plate Mills - Mechanical Maintenance - History of Incentive Adjustment Changes

Representative Test Period
7-5-59 to 1-30-60 excluding weeks ending 7-18-59 through 11-7-59 due to strike

Position	Earnings Old Plan	Earnings New Plan	Code:- Date of Change:-	Incentive Adjustment "A" 4-17-60	"B" 12-1-60	"C" 5-7-61	"D" 10-1-61	"E" 6-10-62	"F" 1-1-66
General to Hot & Cold Mills (Cont'd)									
Bearing Machinist	$3.348	$3.165		.183	.189	.183	.188	.178	.178
Bearing Machinist - Handyman	2.658	2.566		.092	.095	.091	.094	.085	.085
Bearing Repair Helper	2.594	2.491		.103	.107	.102	.105	.096	.096
Bearing Changer Machine Operator	2.594	2.491		.103	.107	.102	.105	.096	.096
Bearing Changer	2.743	2.641		.102	.106	.101	.104	.095	.095
Bearing Changer Helper	2.513	2.416		.097	.100	.096	.099	.091	.091
Roll Bearing Washer	2.248	2.191		.057	.059	.055	.057	.050	.050
Cold Mill									
Shear Blade Supplyman	2.832	2.716		.116	.120	.116	.120	.110	.110
Shear Blade Supplyman Helper	2.421	2.341		.080	.083	.079	.082	.072	.072
Rubber Vulcanizer	3.004	2.865		.139	.144	.138	.142	.132	.132
Automotive Maintenance									
Automotive Mechanic	3.261	3.090		.171	.177	.171	.176	.165	.165
Automotive Repairman "A"	3.090	2.940		.150	.155	.149	.153	.144	.144
Automotive Repairman "B"	2.919	2.791		.128	.132	.127	.131	.122	.122
Automotive Repairman "C"	2.743	2.641		.102	.106	.101	.104	.095	.095

Exhibit 4A Attached to Defendant Bethlehem Steel Corporation's Answer to Interrogatories.

BETHLEHEM STEEL CORPORATION
- Lackawanna Plant -

Cont. Sheet, Strip & Plate Mills - Mechanical Maintenance - History of Incentive Adjustment Changes

Representative Test Period

7-5-59 to 1-30-60 excluding weeks ending 7-18-59 through 11-7-59 due to strike.

Position	Earnings Old Plan	Earnings New Plan	Code:- Date of Change:-	Incentive Adjustment "A" 4-17-60	"B" 12-1-60	"C" 5-7-61	"D" 10-1-61	"E" 6-10-62	"F" 1-1-66
Automotive Maintenance (Cont'd)									
Automotive Repairman Helper	$2.508	$2.416		.092	.095	.091	.094	.086	.086
Automotive Greaser	2.508	2.416		.092	.095	.091	.094	.086	.086
Machine Shop									
Craneman	2.718	2.641		.077	.080	.076	.078	.068	.068
Machinist Leader	3.554	3.390		.164	.170	.163	.167	.156	.156
Machinist "A"	3.387	3.240		.147	.152	.146	.150	.139	.139
Machinist "B"	3.220	3.090		.130	.134	.128	.132	.121	.121
Machinist "C"	3.053	2.940		.113	.117	.111	.114	.104	.104
Machinist Helper	2.489	2.416		.073	.076	.071	.073	.065	.065
Shear Blade Grinder	2.635	2.566		.069	.071	.067	.069	.060	.060
Rotary Surface Grinder	2.635	2.566		.069	.071	.067	.069	.060	.060
Machine Operator "A"	2.885	2.791		.094	.097	.092	.095	.086	.086
Machine Operator "B"	2.718	2.641		.077	.080	.076	.078	.068	.068
Machine Operator "C"	2.550	2.491		.059	.061	.057	.059	.050	.050
(Millwright "A")	-	-		-	-	-	-	-	.104
Mech. Repairman "A" (Millwright "B")	3.053	2.940		.113	.117	.111	.114	.104	.104

Exhibit 4A Attached to Defendant Bethlehem Steel Corporation's Answer to Interrogatories.

BETHLEHEM STEEL CORPORATION
- Lackawanna Plant -

Cont. Sheet, Strip & Plate Mills - Mechanical Maintenance - History of Incentive Adjustment Changes

Representative Test Period
7-5-59 to 1-30-60 excluding weeks ending 7-18-59 through 11-7-59 due to strike.

Position	Earnings Old Plan	Earnings New Plan	Code:- Date of Change:-	Incentive Adjustment "A" 4-17-60	"B" 12-1-60	"C" 5-7-61	"D" 10-1-61	"E" 6-10-62	"F" 1-1-66
Machine Shop (Cont'd)									
Mech. Repairman "B" (Millwright "C")	2.885	2.791		.094	.097	.092	.095	.086	.086
Mech. Repairman "C"	2.718	2.641		.077	.080	.076	.078	.068	- *
Blacksmith "A"	3.304	3.165		.139	.144	.138	.142	.131	.131
Blacksmith "B"	3.136	3.015		.121	.125	.119	.122	.112	.112
Blacksmith "C"	2.969	2.865		.104	.108	.101	.104	.095	.095
Blacksmith Helper	2.550	2.491		.059	.061	.057	.059	.050	.050

Note: Positions in parentheses are those created by craft changes (1-1-66).
* Positions added or eliminated due to craft changes (1-1-66).

Code Explanation	Percent Pay Performance
A - Original I.A.	111.80%
B - Adjustment for general increase of 12-1-60	111.80
C - Adjustments for changes made in Hot Mill Proper and 54" Tandem Mill Incentive Plans	112.00
D - Adjustment for general increase of 10-1-61	112.00
E - Adjustments for changes made in Annealing and #2, 3 & 5 Skin Mills Incentive Plan	112.37
F - Changes due to supplemental agreement on crafts	112.37

Exhibit 4A Attached to Defendant Bethlehem Steel Corporation's Answer to Interrogatories.

Exhibit 4B Attached to Defendant Bethlehem Steel Corporation's Answer to Interrogatories.

BETHLEHEM STEEL CORPORATION

Lackawanna Plant

Cont. Sheet, Strip & Plate Mills - Electrical Maintenance - History of Incentive Adjustment Changes

Position	Representative Test Period 7-5-59 to 1-30-60 Excluding weeks ending 7-18-59 through 11-7-59 due to strike: Earnings Old Plan	Earnings New Plan	Code: Date of Change:	Incentive Adjustment "A" 4-17-60	"B" 12-1-60	"C" 5-7-61 (1)	"D" 10-1-61	"E" 6-10-62 (1)	"F" 1-1-66
Motor Room Operator	3.261	3.090		.171	.177	.171	.176	.165	.165
Motor Room Attendant "A"	3.090	2.940		.150	.155	.149	.153	.144	.144
Motor Room Attendant "B"	2.919	2.791		.128	.132	.127	.131	.122	.122
Motor Room Attendant "C"	2.743	2.641		.102	.106	.101	.104	.095	.095
Motor Room Attendant Helper	2.594	2.491		.103	.107	.102	.105	.096	.096
Crane Millwright (Millwright "A")	3.261	3.090		.171	.177	.171	.176	.165	.165
Crane Repair. "A" (Millwright "B")	3.090	2.940		.150	.155	.149	.153	.144	.144
Crane Repair. "B" (Millwright "C")	2.919	2.791		.128	.132	.127	.131	.122	.122
Crane Repairman "C"	2.743	2.641		.102	.106	.101	.104	.095	-*
Crane Repairman Helper	2.594	2.491		.103	.107	.102	.105	.096	.096
Crane Oiler	2.615	2.491		.124	.128	.124	.128	.119	.119
Motor Inspector (Motor Insp. "A")	3.261	3.090		.171	.177	.171	.176	.165	.165
Elect. Rep. "A" (Motor Insp. "B")	3.090	2.940		.150	.155	.149	.153	.144	.144
Elect. Rep. "B" (Motor Insp. "C")	2.919	2.791		.128	.132	.127	.131	.122	.122
Elect. Repairman "C"	2.743	2.641		.102	.106	.101	.104	.095	-*

Exhibit 4B

BETHLEHEM STEEL CORPORATION

Lackawanna Plant

Cont. Sheet, Strip & Plate Mills - Electrical Maintenance - History of Incentive Adjustment Changes

Representative Test Period
7-5-59 to 1-30-60 Excluding
weeks ending 7-18-59 through
11-7-59 due to strike

Position	Earnings		Code: Date of Change:	Incentive Adjustment "A" 4-17-60	"B" 12-1-60	"C" 5-7-61	"D" 10-1-61	"E" 6-10-62	"F" 1-1-66
	Old Plan	New Plan							
Electrical Helper	2.594	2.491		.103	.107	.102	.105	.096	.096
Electrical Oiler	2.594	2.491		.103	.107	.102	.105	.096	.096
Automotive Mechanic	-	-		-	-	-	-	-	.165

Note: Positions in parentheses are those created by Craft Changes (1-1-66)

* Positions eliminated due to Craft Changes (1-1-66)

Code Explanation		Percent Pay Perf.
A	- Original "I.A."	111.80%
B	- Adjustment for general increase of 12-1-60.	111.80%
C	- Adjustments for changes made in Hot Mill Proper and 54" Tandem Mill incentive plans.	112.00%
D	- Adjustment for general increase of 10-1-61.	112.00%
E	- Adjustments for changes made in annealing and #2, #3 & #5 Skin Mills incentive plans.	112.37%
F	- Change due to supplemental agreement on crafts.	112.37%

Exhibit 4B Attached to Defendant Bethlehem Steel Corporation's Answer to Interrogatories.

BETHLEHEM STEEL CORPORATION
- Lackawanna Plant -

Continuous Sheet, Strip & Plate Mills - Mechanical & Electrical Maintenance - Test Period Performances

Wk. Ending	Percent Performance Contribution to Maintenance Plan: Hot Mill Proper	Hot Mill Shipping	Cont. Picklers	Tandem Mills	Annealing	Skin Mills #2-3-5	Cold Mill Shipping	Total Factored Performance	No. of Factors	Average Factored Performance	Maintenance Performance
Factor	9	1	3	2	1	2	2				
	Original Test Period										
7-11-59	115.06%	100.00%	104.44%	106.81%	112.96%	116.94% *	100.00%	2209.44%	20	110.47%	107.01%
11-14-59	116.07	100.00	106.94	102.59	106.00	106.70	100.00	2190.03	20	109.50	106.37
11-21-59	113.19	100.00	109.51	104.79	113.16	115.41	104.28	2209.36	20	110.47	107.01
11-28-59	121.37	100.00	108.06	110.91	111.77	117.58	112.24	2309.74	20	115.49	110.38
12-5-59	129.02	111.57	108.06	110.78	114.96	117.11	118.31	2404.29	20	120.21	113.54
12-12-59	127.83	122.06	108.58	113.96	113.35	117.65	120.27	2415.38	20	120.77	113.92
12-19-59	124.84	121.13	112.63	114.46	116.56	117.22	130.00	2422.50	20	121.13	114.16
12-26-59	119.00	100.00	111.63	117.00	117.57	121.97	131.84	2365.08	20	118.25	112.23
1-2-60	120.96	100.00	111.91	112.75	116.24	113.67	144.22	2381.89	20	119.09	112.79
1-9-60	120.89	100.00	119.97	116.28	112.35	120.17	131.65	2396.47	20	119.82	113.28
1-16-60	126.80	100.00	117.38	114.47	121.16	117.96	143.97	2467.30	20	123.37	115.66
1-23-60	124.83	100.00	113.98	113.40	115.87	122.52	121.41	2395.94	20	119.80	113.27
1-30-60	123.04	100.00	111.34	110.98	124.63	116.89	144.60	2410.95	20	120.55	113.77
	Straight Average Performance									117.61%	111.80%
	Test Period Adjusted for Changes Made in Hot Mill Proper and 54" Tandem Mill Incentive Plans - May 7, 1961										
7-11-59	115.38%	100.00%	104.48%	107.02%	112.96%	116.94% *	100.00%	2212.76%	20	110.64%	107.13%
11-14-59	116.38	100.00	106.94	102.71	106.00	106.70	100.00	2193.06	20	109.65	106.47
11-21-59	113.82	100.00	109.51	104.79	113.16	115.41	104.28	2215.03	20	110.75	107.20
11-28-59	123.46	100.00	108.06	110.91	111.77	117.58	112.24	2328.55	20	116.43	111.01
12-5-59	129.60	111.57	108.06	110.98	114.96	117.11	118.31	2409.91	20	120.50	113.74
12-12-59	128.21	122.06	108.58	113.96	113.35	117.65	120.27	2418.80	20	120.94	114.03
12-19-59	125.38	121.13	112.63	114.66	116.56	117.22	130.00	2427.76	20	121.39	114.33
12-26-59	119.79	100.00	111.63	117.00	117.57	121.97	131.84	2372.19	20	118.61	112.47
1-2-60	121.14	100.00	111.91	112.95	116.24	113.67	144.22	2383.91	20	119.20	112.86
1-9-60	121.37	100.00	119.97	116.28	112.35	120.17	131.65	2400.79	20	120.04	113.43
1-16-60	127.74	100.00	117.38	114.67	121.16	117.96	143.97	2476.16	20	123.81	115.95
1-23-60	125.20	100.00	113.98	113.56	115.87	122.52	121.41	2399.59	20	119.98	113.39
1-30-60	123.86	100.00	111.34	111.09	124.63	116.89	144.60	2418.55	20	120.93	114.02
	Straight Average Performance									117.91%	112.00%

Exhibit 5

Exhibit 5 Attached to Defendant Bethlehem Steel Corporation's Answer to Interrogatories.

BETHLEHEM STEEL CORPORATION
- Lackawanna Plant -

Continuous Sheet, Strip & Plate Mills - Mechanical & Electrical Maintenance - Test Period Performances

Wk. Ending	Percent Performance Contribution to Maintenance Plan							Total Factored Performance	No. of Factors	Average Factored Performance	Maintenance Performance
	Hot Mill Proper	Hot Mill Shipping	Cont. Picklers	Tandem Mills	Annealing	Skin Mills #2-3-5	Cold Mill Shipping				
Factor	9	1	3	2	1	2	2				
	Test Period Adjusted for Changes Made in Annealing and #2,3 & 5 Skin Mills Incentive Plans - June 10, 1962										
7-11-59	115.38%	100.00%	104.48%	107.02%	116.45%	111.35%	100.00%	2205.05%	20	110.25%	106.87%
11-14-59	116.38	100.00	106.94	102.71	109.93	107.76	100.00	2199.11	20	109.96	106.67
11-21-59	113.82	100.00	109.51	104.79	116.53	117.09	104.28	2221.76	20	111.09	107.43
11-28-59	123.66	100.00	102.06	110.91	115.05	120.68	112.24	2338.03	20	116.90	111.32
12-5-59	129.60	111.57	108.06	110.98	118.16	119.77	118.31	2418.43	20	120.92	114.02
12-12-59	128.81	122.06	108.58	113.96	116.82	120.64	120.27	2428.25	20	121.41	114.34
12-19-59	125.38	121.13	112.63	114.66	119.19	121.16	130.00	2438.27	20	121.91	114.68
12-26-59	119.79	100.00	111.63	117.00	119.10	127.89	131.84	2385.56	20	119.28	112.92
1-2-60	123.14	100.00	111.91	112.95	119.55	119.60	144.22	2399.08	20	119.95	113.37
1-9-60	121.37	100.00	119.97	116.28	116.47	128.10	131.65	2420.77	20	121.04	114.10
1-16-60	127.74	100.00	117.38	114.67	123.16	128.53	143.97	2499.30	20	124.97	116.73
1-23-60	125.20	100.00	113.98	113.56	118.99	127.87	121.41	2413.41	20	120.67	113.65
1-30-60	123.86	100.00	111.34	111.09	125.33	123.32	144.60	2432.11	20	121.61	114.48
	Straight Average Performance									118.46%	112.37%

* Should have been 109.73%. Error corrected in conjunction with test period revision made effective June 10, 1962.

Exhibit 5 Attached to Defendant Bethlehem Steel Corporation's Answer to Interrogatories.

Plaintiffs' Supplemental Interrogatories.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

LAWRENCE RALPH, and DIVERS OTHERS
Plaintiffs

vs.

THE BETHLEHEM STEEL CORPORATION

and

THE UNITED STEELWORKERS OF AMERICA
Defendants

AMENDED AND ADDITIONAL INTERROGATORIES

Civil # 11,892

SIRS:

PLEASE TAKE NOTICE, that the Plaintiffs herein require that the following interrogatories be answered under oath by the defendant BETHLEHEM STEEL CORPORATION, and that the answers be served within fifteen (15) days of the date of service hereof pursuant to Rule 33 of the Federal Rules of Civil Procedure.

1. List for the weeks ending 4/23/60 to the present, the "actual output" percentages figures for each of the seven strip mill production units, as the term is used on page 5, paragraph 2 of the Company's Memorandum dated 1/30/67.

2. Referring to Exhibit 5 of the Company's answers to written interrogatories dated 12/6/66 state the actual output percentage figures for each of the test period weeks listed, and if corrected at a later time, give the correction, the reason for said correction, and the date of said correction.

3. Referring to the incentive plan which became effective for strip mill workers on 4/17/60, state whether a percent performance calculation was made in accordance with the new plan, for the period 1/17/60 through 4/17/60, and if so state the weekly results of that calculation for that period.

4. State for the period 1/17/60 through 4/17/60 the actual output figures for the seven production units of the strip mill, as they would have been used if this period were the test period for the 4/17/60 incentive plan.

5. Explain in detail the calculation of the adjustment figure ".01462585," as shown in the adjustment proposal sheet submitted to the plaintiffs in May of 1966.

Plaintiffs' Supplemental Interrogatories.

6. Explain fully the calculation of the proposed adjustment referred to in paragraph 5 above, the basis for said adjustment, as well as exactly how it relates to the test period adjustments set forth in Exhibit 5 of the Company's answers to plaintiffs' interrogatories.

Dated: March 26, 1968.

SCOTT AND DODMAN

By: William D. Scott

To: Hodgson, Russ, Andrews, Woods & Goodyear
1 M. & T. Plaza
Buffalo, New York 14203

Frank Borowiec, Esq.
300 Edwards Building
Buffalo, New York 14202

Michael Gottesman, Esq.
1001 Connecticut Avenue N. W.
Washington, D. C.

Defendant Bethlehem Steel Corporation's Answers to Interrogatories.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

LAWRENCE RALPH and DIVERS OTHERS

Plaintiffs

-v- ANSWERS TO

THE BETHLEHEM STEEL CORPORATION and INTERROGATORIES

THE UNITED STEELWORKERS OF AMERICA

Defendants

The defendant Bethlehem Steel Corporation by its attorneys Hodgson, Russ, Andrews, Woods & Goodyear for its answers to the plaintiffs' written interrogatories dated March 26, 1968 respectfully answers as follows:

Interrogatory No. 1 The defendant Bethlehem Steel Corporation for its answer to Interrogatory No. 1 refers plaintiffs to its Exhibit 2A attached to its original answers to interrogatories. In further response to this Interrogatory attached hereto and made a part hereof and marked Exhibit 2A-a are the percent performance figures of the seven production units in question for the period October 1, 1966 through August 3, 1968.

These percent performance figures are not meant to reflect tonnage of steel produced alone, nor is the term "actual output" as used by the Corporation meant to be interpreted as solely referring to tonnage of steel produced in considering the issues relative to incentive plans. Percent performance figures include and reflect not only quantities of a product actually produced (for example, tonnage) but also, the element of time involved for such production, the nature of the product produced within a time period plus allowance for repairs, change overs and maintenance.

Defendant Bethlehem Steel Corporation's Answers to Interrogatories.

Interrogatory No. 2 The defendant Bethlehem Steel Corporation refers plaintiffs to its Exhibit 5 attached in response to the written interrogatroy dated October 7, 1966. In further response, it would appear that the plaintiffs use the term "actual output percentage figures" to mean actual tonnage of steel produced. If this be the case, such use of the term is incorrect as stated in response to Interrogatory No. 1. In further response, assuming plaintiffs mean actual tonnage produced when using the term "actual output" such figures for the periods in question are not available. The percent performance figures contained in defendant's Exhibit 5 with the stated correction therein, accurately reflect the percent performance figures during the original test period and those figures as adjusted. The correction made therein was made in conjunction with the test period revision effective June 10, 1962.

Interrogatory No. 3 With reference to the incentive plan which became effective for the Strip Mill Electrical and Mechanical Maintenance workers on April 17, 1960 no calculations were made for the period January 17, 1960 through April 17, 1960, nor were such calculations required.

Interrogatory No. 4 Assuming once again that plaintiffs use the phrase "actual output figures" to mean actual tonnage of steel produced by the seven producing units of the strip mill, no such figures for the period in question are available nor would such figures have been used as proposed by plaintiffs in Interrogatory No. 4.

Interrogatory No. 5 Exhibit 6 is attached hereto and made a part hereof in response to this interrogatory.

Defendant Bethlehem Steel Corporation's Answers
to Interrogatories.

Interrogatory No. 6 Exhibit 6 attached hereto fully states and sets forth the calculations of the proposed adjustment. There is no relationship to the test period as phrased by plaintiffs in Interrogatory 6 nor is such relationship required.

Dated: Buffalo, New York
September 11, 1968

HODGSON, RUSS, ANDREWS, WOODS & GOODYEAR

By S/ Hugh McM. Russ
Hugh McM. Russ

Attorneys for Bethlehem Steel Corporation
One M & T Plaza
Buffalo, New York 14202

TO: SCOTT & DODMAN
Attorneys for plaintiffs
43 Court Street
Buffalo, New York

MICHAEL GOTTESMAN, ESQ.
Messrs. Bredhoff & Gottesman
Attorneys for Def. United Steelworkers of America
10001 Connecticut Ave. N.W.
Washington, D. C.

HARRY J.TIENAN, ESQ.
155 Franklin Street
Of Counsel for Messrs. Bredhoff & Gottesman
Buffalo, New York

BETHLEHEM STEEL CORPORATION
- Lackawanna Plant -

Continuous Sheet, Strip & Plate Mills - Mechanical & Electrical Maintenance - History of Performance

	Percent Performance Contribution to Maintenance Plan										
Wk Ending	Hot Mill Proper	Hot Mill Shipping	Cont. Picklers #1-2-3	54"-75" Tandem Mills	Annealing	Skin Mills #2-3-5	Cold Mill Shipping	Total Factored Performance	No. of Factors	Average Factored Performance	Maintenance Performance
Factor	9	1	3	2	1	2	2				
10- 1-66	114.84%	103.31%	124.43%	105.86%	120.10%	111.29%	132.25%	2329.24%	20	116.46%	111.03%
10- 8-66	117.22	115.81	126.85	105.83	118.03	112.90	136.00	2378.83	20	118.94	112.69
10-15-66	111.14	100.00	124.41	105.21	116.89	112.85	142.42	2311.34	20	115.57	110.43
10-22-66	115.22	100.00	122.32	110.36	117.45	113.27	147.00	2362.65	20	118.13	112.15
10-29-66	119.12	100.00	123.72	105.99	119.76	115.24	154.00	2413.46	20	120.67	113.85
11- 5-66	111.78	100.00	128.97	106.42	120.07	115.21	130.67	2317.60	20	115.88	110.64
11-12-66	116.05	100.00	129.44	105.15	120.07	115.49	162.86	2419.84	20	120.99	114.06
11-19-66	108.33	100.00	122.74	110.85	119.49	117.73	172.85	2365.54	20	118.28	112.25
11-25-66	121.07	100.00	130.48	108.19	119.33	114.72	134.62	2415.46	20	120.77	113.92
12- 3-66	110.49	100.00	116.44	108.86	119.71	111.97	112.79	2230.68	20	111.53	107.73
12-10-66	115.38	100.00	124.14	107.86	119.75	116.86	146.33	2372.69	20	118.63	112.48
12-17-66	111.93	100.00	123.35	106.96	119.96	115.73	137.27	2317.30	20	115.87	110.63
12-24-66	107.96	100.00	125.40	111.48	120.75	107.23	106.08	2218.17	20	110.91	107.31
	Straight average 4th Quarter 1966										111.47%
12-31-66	113.34%	100.00%	127.81%	109.60%	119.14%	109.68%	100.00%	2261.19%	20	113.06%	108.75%
1- 7-67	115.38	100.00	126.15	108.13	121.94	112.97	158.58	2398.17	20	119.91	113.34
1-14-67	118.36	100.00	125.75	105.67	119.27	110.76	151.44	2397.50	20	119.88	113.32
1-21-67	111.69	100.00	130.10	106.07	113.42	116.36	130.93	2320.75	20	116.04	110.75
1-28-67	115.89	100.00	131.02	109.62	113.34	113.54	100.99	2302.62	20	115.13	110.14
2- 4-67	116.39	100.00	130.70	105.63	119.92	112.12	129.04	2353.11	20	117.66	111.83
2-11-67	119.29	100.00	123.60	105.09	118.12	110.77	139.55	2373.35	20	118.67	112.51
2-18-67	120.07	100.00	125.91	106.34	120.10	112.72	139.09	2394.67	20	119.73	113.22
2-25-67	120.34	100.00	131.13	106.11	118.01	111.67	108.12	2346.26	20	117.31	111.60
3- 4-67	121.14	100.00	133.21	106.89	118.86	116.37	126.31	2407.89	20	120.39	113.66
3-11-67	119.34	100.00	129.50	108.58	117.01	115.91	126.90	2382.35	20	119.12	112.81
3-18-67	112.53	100.00	132.28	105.35	122.61	113.77	118.23	2306.92	20	115.35	110.28
3-25-67	116.71	100.00	130.37	105.77	121.82	114.79	100.00	2304.44	20	115.22	110.20
	Straight average 1st Quarter 1967										111.73%

Exhibit 2-a-A

Exhibit 2-a-A Attached to Defendant Bethlehem Steel Corporation's Answers to Interrogatories.

Exhibit 2-a-A Attached to Defendant Bethlehem Steel Corporation's Answers to Interrogatories.

BETHLEHEM STEEL CORPORATION
- Lackawanna Plant -

Continuous Sheet, Strip & Plate Mills - Mechanical & Electrical Maintenance - History of Performance

Percent Performance Contribution to Maintenance Plan

Wk. Ending	Hot Mill Proper	Hot Mill Shipping	Cont Picklers #1-2-3	54"-75" Tandem Mills	Annealing	Skin Mills #2-3-5	Cold Mill Shipping	Total Factored Performance	No. of Factors	Average Factored Performance	Maintenance Performance
Factor	9	1	3	2	1	2	2				
4- 1-67	121.91%	100.00%	133.51%	106.06%	120.32%	110.94%	100.00%	2252.04%	20	112.60%	108.44%
4- 8-67	117.63	100.00	126.84	104.80	116.08	110.40	110.51	2306.69	20	115.33	110.27
4-15-67	108.27	100.00	130.46	103.32	118.98	116.23	100.00	2223.89	20	111.19	107.50
4-22-67	101.61	100.00	126.72	103.89	118.01	111.21	101.34	2209.98	20	110.50	107.04
4-29-67	114.82	100.00	128.51	108.13	121.75	116.55	111.06	2312.14	20	115.61	110.46
5- 6-67	113.08	100.00	125.78	107.32	117.76	114.82	122.76	2302.62	20	115.13	110.14
5-13-67	113.97	100.00	124.68	105.71	119.68	118.26	114.57	2297.13	20	114.86	109.96
5-20-67	116.85	100.00	124.29	108.43	119.52	114.32	130.23	2350.00	20	117.50	111.73
5-27-67	116.21	100.00	124.58	107.31	119.70	115.47	117.10	2319.09	20	115.95	110.69
6- 3-67	116.86	100.00	120.92	107.49	118.48	115.47	116.14	2311.18	20	115.56	110.43
6-10-67	116.13	100.00	122.19	108.02	115.51	114.84	135.18	2343.39	20	117.17	111.50
6-17-67	110.30	100.00	121.85	111.04	119.80	113.12	113.86	2254.09	20	112.70	108.51
6-24-67	113.62	100.00	122.44	106.47	119.38	112.69	105.16	2257.92	20	112.90	108.64
	Straight average 2nd Quarter 1967										109.64%
7- 1-67	115.94%	100.00%	122.23%	104.91%	115.07%	110.86%	100.00%	2256.76%	20	112.84%	108.60%
7- 8-67	116.64	100.00	124.61	108.29	115.37	116.02	104.43	2296.44	20	114.82	109.93
7-15-67	119.86	100.00	115.29	105.89	119.38	111.72	161.05	2401.31	20	120.07	113.45
7-21-67	115.62	100.00	114.27	106.00	117.92	108.06	140.30	2310.03	20	115.50	110.39
7-29-67	117.37	100.00	114.58	105.48	115.91	111.27	128.69	2306.86	20	115.34	110.28
8- 5-67	119.09	100.00	112.16	102.56	113.43	110.52	152.93	2353.74	20	117.69	111.85
8-12-67	121.28	100.00	117.07	104.45	115.87	112.51	145.62	2383.76	20	119.19	112.86
8-19-67	118.90	100.00	122.35	103.59	115.85	112.25	136.74	2358.16	20	117.91	112.00
8-26-67	119.84	100.00	118.29	105.66	116.28	112.22	134.84	2346.15	20	117.31	111.60
9- 2-67	126.93	100.00	126.19	104.85	116.21	109.77	132.97	2432.33	20	121.62	114.49
9- 9-67	124.87	100.00	121.41	105.08	118.26	110.44	113.42	2364.20	20	118.21	112.20
9-16-67	117.97	100.00	115.29	105.72	119.52	108.37	132.77	2320.84	20	116.04	110.75
9-23-67	115.06	100.00	118.76	109.02	117.83	111.81	100.00	2251.31	20	112.66	108.48
	Straight average 3rd Quarter 1967										111.30%

BETHLEHEM STEEL CORPORATION
- Lackawanna Plant -

Sheet 14B

Continuous Sheet, Strip & Plate Mills - Mechanical & Electrical Maintenance - History of Performance

Wk. Ending	Percent Performance Contribution to Mairtenance Plan: Hot Mill Proper	Hot Mill Shipping	Cont. Picklers #1-2-3	54"-75" Tandem Mills	Annealing	Skin Mills #2-3-5	Cold Mill Shipping	Total Factored Performance	No. of Factors	Average Factored Performance	Maintenance Performance
Factor	9	1	3	2	1	2	2				
9-30-67	108.16%	100.00%	117.40%	106.87%	117.32%	113.01%	100.00%	2182.72%	20	109.14%	106.12%
10- 7-67	110.60	100.00	118.93	107.59	117.35	107.84	100.00	2200.40	20	110.02	106.71
10-14-67	114.48	100.00	120.62	108.59	116.63	113.34	100.00	2252.67	20	112.63	108.46
10-21-67	120.67	100.00	121.82	106.09	116.82	114.64	100.00	2309.77	20	115.49	110.38
10-28-67	115.68	100.00	128.30	106.91	115.44	118.66	100.00	2292.84	20	114.64	109.81
11- 4-67	115.93	100.00	123.12	105.03	114.57	112.67	100.00	2262.70	20	113.14	108.80
11-11-67	116.55	100.00	120.96	104.67	115.14	108.74	108.62	2271.03	20	113.55	109.08
11-18-67	123.09	100.00	127.33	106.19	115.09	115.47	112.42	2373.05	20	118.65	112.50
11-25-67	116.91	100.00	124.11	109.44	114.72	112.88	102.43	2288.74	20	114.44	109.67
12- 2-67	121.09	100.00	129.58	108.73	114.64	111.64	103.31	2340.55	20	117.03	111.41
12- 9-67	127.96	100.00	118.97	106.11	116.29	116.26	118.63	2406.84	20	120.34	113.63
12-16-67	126.08	100.00	127.27	109.07	117.11	114.52	106.15	2393.12	20	119.66	113.17
12-23-67	114.71	100.00	125.00	107.55	114.84	114.20	101.22	2268.17	20	113.41	108.98
	Straight average 4th Quarter 1967										109.90%
12-30-67	111.96%	100.00%	122.34%	105.69%	114.64%	107.91%	100.00%	2216.50%	20	110.83%	107.26%
1- 6-68	117.16	100.00	127.35	107.81	115.35	115.09	102.63	2302.90	20	115.15	110.15
1-13-68	121.13	100.00	123.69	104.51	115.87	111.60	104.69	2318.71	20	115.94	110.68
1-20-68	118.67	100.00	128.97	113.80	115.43	111.20	109.78	2339.93	20	117.00	111.39
1-27-68	119.99	100.00	120.49	105.86	115.62	110.23	112.50	2305.09	20	115.25	110.22
2- 3-68	117.49	100.00	123.64	108.06	113.98	111.99	114.44	2313.09	20	115.65	110.49
2-10-68	123.20	100.00	120.57	108.29	116.75	112.44	113.45	2355.62	20	117.78	111.91
2-17-68	119.38	100.00	112.30	109.28	115.32	113.30	122.77	2317.34	20	115.87	110.63
2-24-68	118.85	100.00	124.62	107.21	116.19	112.51	102.77	2304.68	20	115.23	110.20
3- 2-68	121.18	100.00	117.17	107.68	115.19	114.67	111.54	2325.08	20	116.25	110.89
3- 9-68	121.91	100.00	116.55	111.00	117.45	113.58	105.05	2323.55	20	116.18	110.84
3-16-68	126.94	100.00	119.22	106.51	115.05	114.31	113.38	2383.57	20	119.18	112.85
3-23-68	127.65	100.00	116.94	106.07	113.43	112.98	131.03	2413.26	20	120.66	113.84
	Straight average 1st Quarter 1968										110.87%

Exhibit 2-e-A Attached to Defendant Bethlehem Steel Corporation's Answers to Interrogatories.

BETHLEHEM STEEL CORPORATION
- Lackawanna Plant -

Continuous Sheet, Strip & Plate Mills - Mechanical & Electrical Maintenance - History of Performance

	Percent Performance Contribution to Maintenance Plan										
Wk. Ending	Hot Mill Proper	Hot Mill Shipping	Cont. Picklers #1-2-3	54"-75" Tandem Mills	Annealing	Skin Mills #2-3-5	Cold Mill Shipping	Total Factored Performance	No. of Factors	Average Factored Performance	Maintenance Performance
Factor	9	1	3	2	1	2	2				
3-30-68	132.32%	100.00%	118.83%	110.23%	114.06%	119.39%	124.46%	2469.59%	20	123.48%	115.73%
4- 6-68	126.07	100.00	120.26	111.15	114.96	110.59	106.80	2367.45	20	118.37	112.31
4-13-68	122.56	100.00	126.47	110.01	117.05	114.56	106.40	2361.44	20	118.07	112.11
4-20-68	120.92	100.00	116.42	109.07	115.16	110.59	121.12	2334.26	20	116.71	111.20
4-27-68	124.84	100.00	117.12	106.72	116.17	112.97	100.00	2330.47	20	116.52	111.07
5- 4-68	122.22	100.00	117.68	106.33	116.29	111.19	100.00	2304.35	20	115.22	110.20
5-11-68	124.92	100.00	121.09	104.08	115.09	110.88	117.66	2367.88	20	118.39	112.32
5-18-68	118.33	100.00	117.14	106.51	113.61	107.67	120.79	2299.94	20	115.00	110.05
5-25-68	120.68	100.00	127.51	104.90	115.24	109.01	112.64	2336.99	20	116.85	111.29
6- 1-68	121.73	100.00	122.18	106.91	114.23	111.88	115.96	2345.84	20	117.29	111.58
6- 8-68	121.22	100.00	123.98	104.09	114.97	111.76	124.29	2358.17	20	117.91	112.00
6-15-68	115.49	100.00	117.91	104.25	115.48	112.19	100.00	2241.50	20	112.08	106.09
6-22-68	115.53	100.00	117.23	103.44	116.16	112.64	123.04	2285.86	20	114.29	108.57
	Straight Average 2nd Quarter 1968										111.35%
6-29-68	114.96%	100.00%	116.05%	103.41%	114.90%	111.54%	119.96%	2266.61%	20	113.33%	108.93%
7- 6-68	109.31	100.00	117.00	101.89	115.59	112.03	108.70	2200.12	20	110.00	106.71
7-13-68	105.31	100.00	118.67	102.78	113.46	109.52	116.59	2184.04	20	109.20	106.16
7-20-68	109.28	100.00	116.35	101.80	113.57	106.87	108.95	2181.38	20	109.07	106.08
7-27-68	120.50	100.00	114.85	101.57	112.66	110.48	102.14	2270.09	20	113.50	109.05
8- 3-68	110.77	100.00	126.97	104.92	113.62	108.95	100.00	2219.20	20	110.96	107.34

Exhibit 2-e-A Attached to Defendant Bethlehem Steel Corporation's Answers to Interrogatories.

BETHLEHEM STEEL CORPORATION
- Lackawanna Plant -

Continuous Sheet, Strip and Plate Mills-Mechanical Maintenance - Retroactive Payment Offer
Retroactive Period - 4-17-60 through 6-9-62

Position	S.H.W.R.	Retroactive Amount/Hour (S.H.W.R. x .0146*)
General to Hot & Cold Mills		
Millwright (Millwright "A")	$2.940	$.043
Mech. Repairman "A" (Millwright "B")	2.800	.041
Mech. Repairman "B" (Millwright "C")	2.660	.039
Mech. Repairman "C"	2.520	.037
Mechanical Helper	2.380	.035
Welder "A"	2.940	.043
Welder "B"	2.800	.041
Welder "C"	2.660	.039
Storekeeper Shop	2.170	.032
Tractor Operator	2.450	.036
Oiler & Greaser Leader	2.800	.041
Oil System Man	2.660	.039
Oil System Man Helper	2.380	.035
Oiler and Greaser	2.380	.035
Oiler and Greaser Helper	2.240	.033
Bearing Machinist	$3.010	$.044
Bearing Machinist Handyman	2.450	.036
Bearing Repair Helper	2.380	.035
Bearing Changer Machine Operator	2.380	.035
Bearing Changer	2.520	.037
Bearing Changer Helper	2.310	.034
Roll Bearing Washer	2.100	.031
Shear Blade Supplyman	2.590	.038
Shear Blade Supplyman Helper	2.240	.033
Rubber Vulcanizer	2.730	.040
Automotive Maintenance		
Automotive Mechanic	2.940	.043
Automotive Repairman "A"	2.800	.041
Automotive Repairman "B"	2.660	.039

Exhibit 6

Exhibit 6 Attached to Defendant Bethlehem Steel Corporation's Answers to Interrogatories.

Continuous Sheet, Strip and Plate Mills - Mechanical Maintenance - Retroactive Payment Offer

Retroactive Period - 4-17-60 through 6-9-62

Position	S.H.W.R.	Retroactive Amount/Hour (S.H.W.R. x .0146*)
Automotive Maintenance (Cont'd)		
Automotive Repairman "C"	$2.520	$.037
Automotive Repairman Helper	2.310	.034
Automotive Greaser	2.310	.034
Machine Shop		
Craneman	2.520	.037
Machinist Leader	3.220	.047
Machinist "A"	3.080	.045
Machinist "B"	2.940	.043
Machinist "C"	2.800	.041
Machinist Helper	2.310	.034
Shear Blade Grinder	2.450	.036
Rotary Surface Grinder	2.450	.036
Machine Operator "A"	2.660	.039
Machine Operator "B"	2.520	.037
Machine Operator "C"	2.380	.035
(Millwright "A")	2.940	None ø
Mech. Repairman "A" (Millwright "B")	2.800	.041
Machine Shop (Cont'd)		
Mech. Repairman "B" (Millwright "C")	$2.660	$.039
Mech. Repairman "C"	2.520	.037
Blacksmith "A"	3.010	.044
Blacksmith "B"	2.870	.042
Blacksmith "C"	2.730	.040
Blacksmith Helper	2.380	.035

Note: Positions in parentheses are those created by craft changes (1-1-66).

ø Position effective as of 1-1-66 due to craft changes.

Continuous Sheet, Strip and Plate Mills - Mechanical and Electrical Maintenance - Retroactive Payment Offer

Method used to calculate factor of .0146

$$\frac{C - B}{A} = \frac{3.408 - 3.365}{2.940} = \frac{.043}{2.940} = .0146$$

A = S.H.W.R. (as of 10-1-61) of Millwright (Millwright "A") position = 2.940

B = Average earnings per hour of Millwright (Millwright "A") position for retroactive period from 4-17-60 to 6-9-62.

Year	Qtr.	Maintenance Performance	Number of Weeks	I.A. Adjusted to 10-1-61 Rates	Earn./Hour Adjusted to 10-1-61 Rates
1960	2	103.27%	9		
1960	3	107.40	14		
1960	4	105.92	13		
1961	1	107.25	13		
1961	2 end.5/6	110.55	6		
Weighted Average 4-17-60 to 5-6-61		107.52		.182	3.343
1961	2 st.5/7	109.23	7		
1961	3	107.68	13		
1961	4	111.34	13		
1962	1	110.97	13		
1962	2 end.6/9	106.27	11		
Weighted Average 5-7-61 to 6-9-62		109.23		.176	3.387
Weighted Average 4-17-60 to 6-9-62					3.365

C = Average earnings per hour of Millwright (Millwright "A") position for period from 6-10-62 to 5-21-66.

Year	Qtr.	Maintenance Performance	Number of Weeks	I.A. Adjusted to 10-1-61 Rates	Earn./Hour Adjusted to 10-1-61 Rates
1962	2 st.6/10	104.81	2		
1962	3	108.52	13		
1962	4	110.62	13		
1963	1	109.81	13		
1963	2	111.20	13		
1963	3	107.91	13		
1963	4	110.23	13		
1964	1	110.94	13		
1964	2	110.70	13		
1964	3	109.68	13		
1964	4	110.03	14		
1965	1	110.93	12		
1965	2	111.94	13		
1965	3	109.09	13		
1965	4	108.49	14		
1966	1	113.35	12		
1966	2 end.5/21	113.89	9		
Weighted Average 6-10-62 to 5-21-66		110.31		.165	3.408

Note: Position in parentheses was created by craft changes of 1-1-66.

Exhibit 6 Attached to Defendant Bethlehem Steel Corporation's Answers to Interrogatories.

BETHLEHEM STEEL CORPORATION

LACKAWANNA PLANT

Continuous Sheet, Strip & Plate Mills - Electrical Maintenance - Retroactive Payment Offer

Retroactive Period - 4-17-60 through 6-9-62

Position	S.H.W.R.	Retroactive Amount Per Hour (S.H.W.R. x .0146*)
General to Hot & Cold Mills		
Motor Room Operator	$2.940	.043
Motor Room Attendant "A"	2.800	.041
Motor Room Attendant "B"	2.660	.039
Motor Room Attendant "C"	2.520	.037
Motor Room Attendant Helper	2.380	.035
Crane Millwright (Millwright "A")	2.940	.043
Crane Repairman "A" (Millwright "B")	2.800	.041
Crane Repairman "B" (Millwright "C")	2.660	.039
Crane Repairman "C"	2.520	.037
Crane Repairman Helper	2.380	.035
Crane Oiler	2.380	.035
Motor Inspector (Motor Insp. "A")	2.940	.043
Elect. Rep. "A" (Motor Insp. "B")	2.800	.041
Elect. Rep. "B" (Motor Insp. "C")	2.660	.039
Elect. Repairman "C"	2.520	.037
Electrical Helper	$2.380	.035
Electrical Oiler	2.380	.035
Automotive Mechanic	2.940	None ø

Note: Positions in parentheses are those created by Craft Changes (1-1-66)

ø Position effective as of 1-1-66.

Exhibit G Attached to Defendant Bethlehem Steel Corporation's Answers to Interrogatories.

BETHLEHEM STEEL CORPORATION

LACKAWANNA PLANT

Sheet 2 of 2

Continuous Sheet, Strip and Plate Mills - Mechanical and Electrical Maintenance - Retroactive Payment Offer

* Method used to calculate factor of .0146

$$\frac{C - B}{A} = \frac{3.408 - 3.365}{2.940} = \frac{.043}{2.940} = .0146$$

A = S.E.W.R. (as of 10-1-61) of Millwright (Millwright "A") position = 2.940

B = Average earnings per hour of Millwright (Millwright "A") position for retroactive period from 4-17-60 to 6-9-62.

Year	Qtr.	Maintenance Performance	Number of Weeks	I.A. Adjusted to 10-1-61 Rates	Earn./Hour Adjusted to 10-1-61 Rates
1960	2	103.87%	9		
1960	3	107.10	14		
1960	4	103.93	13		
1961	1	107.25	13		
1961	2 end.5/6	110.55	6		
Weighted Average 4-17-60 to 5-6-61		107.52		.182	3.343
1961	2 st.5/7	109.23	7		
1961	3	107.63	13		
1961	4	111.34	13		
1962	1	110.97	13		
1962	2 end.6/9	106.27	11		
Weighted Average 5-7-61 to 6-9-62		109.23		.176	3.337
Weighted Average 4-17-60 to 6-9-62					3.365

C = Average earnings per hour of Millwright (Millwright "A") position for period from 6-10-62 to 5-21-66.

Year	Qtr.	Maintenance Performance	Number of Weeks	I.A. Adjusted to 10-1-61 Rates	Earn./Hour Adjusted to 10-1-61 Rates
1962	2 st.6/10	104.01	2		
1962	3	100.52	13		
1962	4	110.62	13		
1963	1	109.01	13		
1963	2	111.20	13		
1963	3	107.91	13		
1963	4	110.23	13		
1964	1	110.94	13		
1964	2	110.70	13		
1964	3	109.68	13		
1964	4	110.03	14		
1965	1	110.93	12		
1965	2	111.94	13		
1965	3	109.09	13		
1965	4	100.49	14		
1966	1	113.35	12		
1966	2 end.5/21	113.09	9		
Weighted Average 6-10-62 to 5-21-66		110.31		.165	3.408

Note: Position in parentheses was created by craft changes of 1-1-66.

Defendant Bethlehem Steel Corporation's Interrogatories.

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

LAWRENCE RALPH, and DIVERS OTHERS

Plaintiffs

-vs-

THE BETHLEHEM STEEL CORPORATION

and

THE UNITED STEELWORKERS OF AMERICA

Defendants

INTERROGATORIES

Civil Action
No. 11,192

S I R S:

PLEASE TAKE NOTICE that the defendant, Bethlehem Steel Corporation, requires that the following interrogatories be answered under oath by all of the plaintiffs herein, and that the answers be served within fifteen (15) days of the date of service hereof pursuant to Rule 33 of the Federal Rules of Civil Procedure.

1. What is the address and time card number of the plaintiff, Lawrence Ralph?

2. What are the names, addresses, and time card numbers of all those persons referred to as "divers others" in the title of this action?

3. Is each and every plaintiff in this action represented by an attorney?

4. If the answer to interrogatory number 3 is in the affirmative, what are the names of all attorneys representing the plaintiffs?

5. When, where and how did the retaining of said attorney or attorneys by plaintiffs take place?

Defendant Bethlehem Steel Corporation's Interrogatories.

6. In what department of the Bethlehem Steel Corporation, Lackawanna Plant, is each and every plaintiff employed?

7. What is the job classification or title or description of each plaintiff?

8. On what date did each and every plaintiff begin his employment with Bethlehem Steel Corporation?

9. On what date did each and every plaintiff begin working in the department of Bethlehem Steel Corporation as listed in answer to interrogatory number 6?

10. Is each and every plaintiff still employed at Bethlehem Steel Corporation, Lackawanna Plant?

11. Is each and every plaintiff still employed in the same department as listed in answer to interrogatory number 6?

12. What has been and presently is the hourly wage rate of each and every plaintiff herein beginning with the period November 1960?

13. What has been and presently is the average weekly earnings of each and every plaintiff herein beginning with the period November 1960 to the present?

14. Is each and every plaintiff herein a member of Local No. 2604 United Steelworkers of America?

15. Is Local No. 2604 a part of or a member of the international union known as the United Steelworkers of America?

16. What are the names and addresses of the officers of Local No. 2604?

17. What are the names and addresses of the union stewards for each and every plaintiff herein, listing all union stewards for the period November 1960 to the present?

18. Do any of the plaintiffs belong to any other union or unions and if so, which plaintiffs belong to another union or unions?

19. If the answer to interrogatory number 18 is in the affirmative, what are the names of the other unions?

20. Is not the United Steelworkers of America the authorized representative of plaintiffs herein in dealing with such matters as pay, hours of work and conditions of employment as they relate to plaintiffs' employment with the Bethlehem Steel Corporation?

21. Did not the Bethlehem Steel Corporation enter into agreements dated July 1, 1954, August 3, 1956, January 4, 1960, April 1, 1962 and September 1, 1965 with the United Steelworkers of America?

22. Do not these agreements relate to and govern matters concerning pay, hours of work, conditions of employment, and procedures for processing and settling any and all claims by an employee or the union against the Bethlehem Steel Corporation?

23. What do such agreements provide relative to issues of compensation, working conditions, and processing of claims or grievances?

24. Were not such agreements in effect during the period November 1960 to the present?

25. Did not the United Steelworkers of America act as the representative of Local 2604 and all of its members in signing the aforementioned agreements with Bethlehem Steel Corporation?

Defendant Bethlehem Steel Corporation's Interrogatories.

26. Did not the Bethlehem Steel Corporation enter into an agreement dated May 25, 1956, known as Supplemental Agreement, with the United Steelworkers of America?

27. Does not the May 25, 1956 Agreement, known as the May 25, 1956 Supplemental Agreement, relate to and govern incentive compensation?

28. Was not the May 25, 1956 Supplemental Agreement in effect during the period November 1960 to the present?

29. What does the May 25, 1956 Supplemental Agreement provide relative to incentive compensation?

30. Did not the United Steelworkers of America act as the representative of Local 2604 and all of its members in signing the May 25, 1956 Supplemental Agreement?

31. Did not the Bethlehem Steel Corporation enter into an agreement dated January 1960 and designated, Memorandum of Understanding, with the United Steelworkers of America?

32. Does not the January 1960 Agreement, designated Memorandum of Understanding, relate to and govern incentive compensation?

33. Was not the January 1960 Agreement, designated Memorandum of Understanding, in effect during the period November 1960 to the present?

34. What does the January 1960 Agreement, designated Memorandum of Understanding, provide relative to incentive compensation?

35. Did not the United Steelworkers of America act as the representative of Local 2604 and all of its members in

signing the January 1960 Agreement, designated Memorandum of Understanding?

36. Have any of the plaintiffs individually filed any grievances during the period November 1960 to the present with the defendant, Bethlehem Steel Corporation or its representatives, relative to the issue of pay rates or incentive rates?

37. If the answer to interrogatory number 36 is in the affirmative, what are the names of those plaintiffs who filed such grievances?

38. On what date or dates were such grievances filed?

39. With whom were such grievances filed?

40. What was the specific claim of each grievance filed?

41. What procedure was followed in the processing of each grievance filed?

42. What was the final determination made with respect to each grievance filed?

43. What was the basis for the determination made with respect to each grievance filed?

44. Have any of the plaintiffs, acting as a group, filed any grievances during the period November 1960 to the present with the defendant, Bethlehem Steel Corporation or its representatives relative to the matter of pay rates or incentive payments?

45. If the answer to interrogatory number 44 is in the affirmative, what are the names of those plaintiffs acting in a group who filed such grievances?

Defendant Bethlehem Steel Corporation's Interrogatories.

46. On what date or dates were such grievances filed?

47. With whom were such grievances filed?

48. What was the specific claim of each grievance filed?

49. What procedure was followed in the processing of each grievance filed?

50. What was the final determination made with respect to each grievance filed?

51. What was the basis for the determination made with respect to each grievance filed?

52. Has Local Union 2604, United Steelworkers of America, or any of its officers or representatives, filed any grievances during the period November 1960 to the present with the defendant, Bethlehem Steel Corporation or its representatives, relative to the matter of pay rates or incentive compensation?

53. If the answer to interrogatory number 52 is in the affirmative, what are the names of the officers or representatives of Local 2604 who filed such grievances?

54. On what date or dates were such grievances filed?

55. With whom were such grievances filed?

56. What was the specific claim of each grievance filed?

57. What procedure was followed in the processing of each grievance filed?

58. What was the final determination made with respect to each grievance filed?

Defendant Bethlehem Steel Corporation's Interrogatories.

59. What was the basis for the determination made with respect to each grievance filed?

60. Have any of the plaintiffs individually filed a grievance with the Bethlehem Steel Corporation or its representatives, relative to the claim of compensation that is being made in this lawsuit?

61. If the answer to interrogatory number 60 is in the affirmative, what are the names of the plaintiffs who filed such grievances?

62. On what date were such grievances filed?

63. With whom were such grievances filed?

64. What was the specific claim of each grievance filed?

65. What procedure was followed in processing such grievance?

66. Have any determinations or decisions been made relative to each grievance filed?

67. If so, what was the specific determination or decision made with respect to each grievance filed?

68. What was the basis for the determination or decision made with respect to each grievance filed?

69. Have any of the plaintiffs acting as a group filed a grievance or grievances with the defendant Bethlehem Steel Corporation or its representatives, relative to the claim of compensation that is being made in this lawsuit?

70. If the answer to interrogatory number 69 is in the affirmative, what are the names of those plaintiffs acting in a group who filed such grievances?

71. On what date or dates were such grievances filed?

72. With whom were such grievances filed?

73. What was the specific claim of each grievance filed?

74. What procedure was followed in processing such grievance?

75. Have any determinations or decisions been made relative to each grievance filed?

76. If so, what was the specific determination or decision made with respect to each grievance filed?

77. What was the basis for the determination or decision made with respect to each grievance filed?

78. Has Local Union No. 2604 United Steelworkers of America, or any of its officers or representatives, filed any grievances with the defendant Bethlehem Steel Corporation or its representatives, relative to the claim of compensation that is being made in this lawsuit?

79. If the answer to interrogatory number 78 is in the affirmative, what are the names of the officers or representatives of Local 2604 who filed such grievances?

80. On what date or dates were such grievances filed?

81. With whom were such grievances filed?

Defendant Bethlehem Steel Corporation's Interrogatories.

82. What was the specific claim of each grievance filed?

83. What procedure was followed in processing such grievance?

84. Have any determinations or decisions been made with respect to each grievance filed?

85. If so, what was the specific determination or decision made with respect to each grievance filed?

86. What was the basis for the determination or decision made with respect to each grievance filed?

87. What is the specific amount of money each and every plaintiff claims that defendant, Bethlehem Steel Corporation, has failed and refused to pay him as alleged in paragraph VI of the complaint herein?

88. In what manner does each and every plaintiff claim that the defendant, Bethlehem Steel Corporation, has deprived him of compensation alleged to be due and owing?

89. Is each and every plaintiff's claim for compensation based on some sort of formula or calculation?

90. If so, what is that formula or calculation in detail?

91. Did not the Bethlehem Steel Corporation, in 1966 offer to adjust and make payment of the incentive wages which are the issue of this law suit, to all of the members of the bargaining unit representing all of the employees of the Bethlehem Steel Corporation, Lackawanna Plant.

Defendant Bethlehem Steel Corporation's Interrogatories.

92. What was the date on which the offer of compensation by Bethlehem Steel Corporation as referred to in interrogatory 91, was made to the employees of the Lackawanna Plant?

93. What, in detail, were the terms of the offer of compensation by Bethlehem Steel Corporation as referred to in interrogatory number 91?

94. Was not the offer to compensate, as referred to in interrogatory number 91, rejected by the plaintiffs herein?

95. If the answer to interrogatory number 94 is in the affirmative, on what date was the offer to compensate rejected?

96. What was the basis, in detail, for the rejection of the offer of compensation by the plaintiffs herein?

97. Did the plaintiffs give notice to the defendant Bethlehem Steel Corporation of their rejection of its offer of compensation?

98. If notice was given, what was the text of said notice as given?

99. To whom was such notice of rejection given?

100. What are the names of the plaintiffs or individuals who gave notice of the rejection?

101. On what date was such notice of rejection given?

Defendant Bethlehem Steel Corporation's Interrogatories.

102. Do not the contracts between the Bethlehem Stee Corporation and the United Steelworkers of America which were and are in effect during the period November 1963 and the present, provide for procedures to be followed in settling or resolving disputes including disputes relating to compensation due employees?

103. Did any of the plaintiffs herein follow or submit to the procedures contained in the contracts between the Bethlehem Steel Corporation and the United Steelworkers of America relative to compensation due as claimed in plaintiffs' complaint herein?

104. If the answer to interrogatory number 103 is in the affirmative, what are the names of the plaintiffs who followed such procedures?

105. What are the dates on which their claims were submitted in accordance with the procedures referred to in interrogatory number 103?

106. Did any of the plaintiffs individually file a grievance with the defendant Bethlehem Steel Corporation or its representatives relative to the matter of compensation, as claimed in plaintiffs' complaint, at any time after the offer of compensation, as referred to in interrogatory number 91, was rejected?

107. If the answer to interrogatory number 106 is in the affirmative, what are the names of those plaintiffs who filed such grievances?

108. On what date or dates were such grievances filed?

109. With whom were such grievances filed?

110. What was the specific claim of each grievance filed?

111. Has there been any disposition or determination made with respect to those grievances filed?

112. If so, what was the disposition or determination, in detail, of each grievance filed?

113. What was the basis for the disposition or determination made with respect to each grievance filed?

114. Are any grievances relating to the issue of compensation as claimed in plaintiffs' complaint, filed by individual plaintiffs, presently pending?

115. Have any of the plaintiffs, acting as a group, filed a grievance or grievances with the defendant Bethlehem Steel Corporation or its representatives, relative to the matter of compensation, as claimed in plaintiffs' complaint, at any time after the offer of compensation, as referred to in interrogatory number 91, was rejected?

116. If so, what are the names of those plaintiffs who filed such grievance or grievances?

117. On what date were such grievances filed?

118. With whom were such grievances filed?

119. What was the specific claim with respect to each grievance filed?

120. What procedure was followed in processing such grievance or grievances?

121. Have any determinations or decisions been made with respect to each grievance filed?

122. If so, what was the specific determination or decision made with respect to each grievance filed?

123. What was the basis for the determination or decision made with respect to each grievance filed?

124. Are any grievances filed by the plaintiffs acting as a group relative to the issue of compensation as claimed in the complaint, presently pending?

125. Has Local 2604 United Steelworkers of America or any of its officers or representatives filed any grievances with the defendant, Bethlehem Steel Corporation, or its representatives, relative to the matter of compensation, as claimed in plaintiffs' complaint, at any time after the offer of compensation, as referred to in interrogatory number 91, was rejected?

126. If the answer to interrogatory 125 is in the affirmative, what are the names of the officers or representatives of Local 2604 who filed such grievance or grievances?

127. On what date were such grievances filed?

128. With whom were such grievances filed?

129. What was the specific claim of each grievance filed?

130. What procedure was followed in processing such grievances filed?

131. Have any determinations or decisions been made with respect to each grievance filed?

132. If so, what was the specific determination or decision made with respect to each grievance filed?

133. What was the basis for the determination or decision made with respect to each grievance filed?

134. Are any grievances filed by Local 2604, its officers or representatives, relative to the issue of compensation as claimed by plaintiffs in the complaint, presently pending?

135. Have any of the plaintiffs requested the officers and/or representatives of Local 2604, after the offer of compensation was rejected, to file a grievance relative to the issue of compensation as claimed in the complaint?

136. If the answer to interrogatory 135 is in the affirmative, what are the names of those plaintiffs who made such request?

137. On what date or dates were such requests made?

138. To whom were such requests made?

139. Has there been any response or determination made to such requests?

140. If so, what was the specific response or determination made with respect to each request?

141. On what date or dates was such response or determination made?

142. Have the duly authorized officers and/or the representatives of Local Union 2604, United Steelworkers of America authorized, sanctioned or given their approval of this action brought by plaintiffs against the Bethlehem Steel Corporation?

Defendant Bethlehem Steel Corporation's Interrogatories.

143. If the answer to interrogatory 142 is in the affirmative, what are the names of the officers and/or representatives who gave such approval?

144. What are the terms of the approval so given?

145. On what date or dates was such approval given?

146. Have the duly authorized officers and/or representatives of the International United Steelworkers of America authorized, sanctioned, or given their approval of this action brought by plaintiffs against the Bethlehem Steel Corporation?

147. If the answer to interrogatory 146 is in the affirmative, what are the names of the officers and/or representatives who gave such approval?

148. What are the terms of the approval so given?

149. On what date or dates was such approval given?

150. Have any of the plaintiffs requested the officers and/or representatives of the International United Steelworkers of America, after the offer of compensation, as referred to in interrogatory 91, was rejected, to file a grievance relative to the issue of compensation as claimed in the complaint?

151. If the answer to interrogatory 150 is in the affirmative, what are the names of the plaintiffs who made such request?

152. On what date or dates were such requests made?

153. To whom were such requests made?

Defendant Bethlehem Steel Corporation's Interrogatories.

154. Has there been any response or determination made to such requests.

155. If so, what was the specific response or determination made with respect to each request?

156. On what date or dates was such response or determination made?

157. Specifically what section or sections of Title 29 of the United States Code do plaintiffs herein rely on for recovery of punitive damages and attorneys fees as sought in the complaint herein?

Dated: October 15, 1968.

HOGAN, RUSS, ADKINS, WOODS & GOODYEAR

By _____
Hugh McH. Russ

Plaintiffs' Answer to Interrogatories.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

LAWRENCE RALPH, and DIVERS OTHERS
Plaintiffs

vs.

ANSWERS TO
WRITTEN INTERROGATORIES

THE BETHLEHEM STEEL CORPORATION

and

THE UNITED STEELWORKERS OF AMERICA
Defendants

Civil Action
No. 11,892

The plaintiffs above named, by their attorneys SCOTT AND DODMAN, for their answer to the Defendant Bethlehem Steel Corporation's demand for written interrogatories, respectfully answer as follows:

1. The plaintiffs have objected to interrogatories numbered "1 and 2" and therefore make no answer with respect to the same.

2. In answer to interrogatory number "3", the plaintiffs answer that each and every plaintiff in this action is represented by an attorney.

3. In answer to interrogatory number "4", the plaintiffs answer that each and every plaintiff in this action is represented by the firm of SCOTT and DODMAN.

4. The plaintiffs have objected to interrogatories numbered "5 through 87" inclusive, and therefore make no answer with respect to the same.

5. In answer to interrogatory number "88", the plaintiffs answer that the defendant Bethlehem Steel Corporation has failed to compensate each and every plaintiff in accordance with the terms, conditions and requirements of all main agreements and any supplemental agreements in force on or after March 13, 1960, including but not limited to the January 4, 1960 Memorandum of understanding.

6. In answer to interrogatory number "89", the plaintiffs answer that each and every claim for compensation is based on a formula or calculation.

7. In answer to interrogatory number "90", the plaintiffs answer that the computation of compensation due to the plaintiffs is based in part on an improper incentive wage adjustment which became effective on April 17, 1960. This improper incentive adjustment is a result of the following formula provided by the defendant's own information sheets.

Plaintiffs' Answer to Interrogatories.

A = Total Percent Performance in all of the plaintiff's departments.

B = Factors for the above departments as set by the defendant company.

C = Average factored percent performance, or $\frac{A}{B}$

D = Percent performance in excess of 100%, or (C - 100%)

E = Amount of above excess benefiting indirect workers, or (D x 67%)

O = Incentive under "old plan" during "test period."

I. A. = Incentive Adjustment

S.H.W.R. = Standard Hourly Wage Rate

FORMULA = (S.H.W.R. + O) - S.H.W.R.(1 + D x .67) = I. A.

The plaintiffs further allege a violation of the "Equitable Compensation" requirements of Article V, Section 2 (C) of the Main Agreement, as defined by paragraph 1 of the January 4, 1960 Memorandum of Understanding.

8. In answer to interrogatory number "91", the plaintiffs answer that the defendant Bethlehem Steel Corporation did make an offer to pay a portion of the incentive wages which are the issue of this lawsuit, but that the said defendant did not offer to adjust and make payment of the actual amount of incentive wages which are the issue of this lawsuit.

9. In answer to the said interrogatory number "92", the plaintiffs answer that said offer was made on May 31, 1966, at 11 o'clock in the forenoon of said day and again at 3 o'clock in the afternoon of the same day at the John F. Kennedy Memorial Hall, on Ridge Road, Lackawanna, New York.

10. In answer to interrogatory number "93", the terms of the offer were as follows: "S.H.W.R. x .01462585".

11. In answer to interrogatory number "94", plaintiffs answer that the said offer was rejected.

12. In answer to interrogatory number "95", the said offer was rejected on May 31, 1966, at 11 o'clock in the forenoon and again at 3 o'clock in the afternoon of the same day.

13. In answer to interrogatory number "96", the plaintiffs answer that the basis for the said rejection was that the said offer was inadequate.

14. In answer to interrogatory number "97", the plaintiffs answer that they did give notice of the said rejection.

15. In answer to interrogatory number "98", notice of the said rejection was given by unanimous oral acclamation.

16. In answer to interrogatory number "99", notice of the said rejection was given to the officials of Local 2604 of the United Steelworkers of America, co-defendant herein, who were in attendance at two separate meetings at the John F. Kennedy Memorial Hall on Ridge Road, in Lackawanna, New York, and the said rejection was immediately relayed by telephone to a representative of the defendant Bethlehem Steel Corporation, by an official of the defendant United Steelworkers of America.

17. In answer to interrogatory number "100", notice of the said rejection was given by each and every one of the plaintiffs herein.

18. In answer to interrogatory number "101", the plaintiffs refer the defendant Bethlehem Steel Corporation to the answer to interrogatory number "95" above.

19. The plaintiffs have objected to interrogatories numbered "102 through 156" inclusive, and therefore make no answer with respect to the same.

20. In answer to interrogatory number "157", the plaintiffs answer that they will seek to rely on each and every section or sections of Title 29 of the United States Code which may be applicable or relevant herein.

Dated: October 18, 1966.

Yours etc.,

William D. Scott
SCOTT AND DODSON
Attorneys for Plaintiffs
Office and P. O. Address
43 Court Street
Buffalo, New York 14202
853-8850

TO:

Hodgson, Russ, Andrews, Woods, & Goodyear
Attorneys for Def. Bethlehem Steel Corp.
Office and P. O. address
800 M. & T. Building
Buffalo, New York 14203

Michael Cottesman, Esq.
Bredhoff & Cottesman
Attorneys for Def. United Steelworkers of America
1001 Connecticut Ave., N. W.
Washington, D. C.

Frank Berardino, Esq.
Of Counsel for Bredhoff & Cottesman
Office and P. O. Address
300 Edwards Building
155 Franklin Street
Buffalo, New York 14202

Plaintiffs' Answers to Interrogatories.

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

LAWRENCE RALPH, and DIVERS OTHERS

Plaintiffs

-vs-

THE BETHLEHEM STEEL CORPORATION

and

THE UNITED STEELWORKERS OF AMERICA

Defendants

ANSWERS TO INTERROGATORIES

Civil Action
No. 11,892

The plaintiffs, by their attorneys, SCOTT & DOIMAN, for their answers to the defendant's written interrogatories respectfully answer as follows:

NUMBER	ANSWER
14.	No. As of the date of these answers, the employment status of several of the plaintiffs has changed. See attached list labeled exhibit "1." for the names of those individuals whose status is changed with an appropriate explanation.
20.	On information and belief, Yes.
21.	Yes.
22.	Yes.
24.	On information and belief, Yes.
25.	On information and belief, Yes.
26.	On information and belief, Yes.

Plaintiffs' Answers to Interrogatories.

27. On information and belief, Yes.

28. On information and belief, Yes.

30. On information and belief, Yes.

31. On information and belief, Yes.

32. On information and belief, Yes.

33. On information and belief, Yes.

35 On information and belief, Yes.

36. The plaintiffs investigation discloses that a grievance "relative to the issue of pay rates or incentive rates", could result from any paycheck discrepancy or shortage in any week as to any or all of the plaintiffs. As a result, it is possible that from November, 1960 to date hundreds of complaints could have been made by the various plaintiffs with regard to "pay rates or incentive rates." Furthermore, it was determined that the records of such complaints if made, are under lock and key in custody of the defendant, UNITED STEELWORKERS OF AMERICA, and are not available to the plaintiffs.

37. See #36.

38. See #36.

39. See #36.

Plaintifts' Answers to Interrogatories.

40. See #36.

41. See #36.

42. See #36.

43. See #36.

44. See #36.

45. See #36.

46. See #36.

47. See #36.

48. See #36.

49. See #36.

50. See #36.

51. See #36.

52. See #36.

53. See #36.

54. See #36.

55. See #36.

56. See #36.

57. See #36.

58. See # 36.

59. See #36.

60. Some of the plaintiffs have individually made complaints to union officials with regard to the claim of compensation that is being made in this law suit.

Plaintiffs' Answers to Interrogatories.

61. The plaintiffs do not file individual grievances. However, in an attempt to answer this interrogatory the plaintiffs can state that the name of the representative employee on one of the two grievances concerned is LEO BRZYSKI.

62. Grievance B-3141 was presented to a foreman on June 1st, 1960. Grievance B-3139 was presented to a foreman on June 24th, 1960.

63. Grievance B-3141 was presented to foreman WILLIAM PRUSS. Grievance B-3139 was presented to foreman H. JACKSON.

64. See photostatic copies of grievance's attached hereto as exhibit "2."

65. On information and belief, at various times and dates, the two grievances concerned were processed through all of the 5½ steps of the Contract Grievance Procedure.

66. Yes.

67. The most recent decision concerning the two grievances took place on information and belief on July 12th, 1965 before an impartial umpire.

Plaintiffs' Answers to Interrogatories.

67. (con't) The decision makes no determination on the merits but instead holds that there are no issues properly before the umpire.

68. The basis for the above decision was upon information and belief, the apparent withdrawal or settlement of the issues involved.

69. In an attempt to answer this interrogatory, the plaintiffs state that the two grievances referred to above were filed on behalf of all the plaintiffs on the date's stated.

70. See #69.

71. See #62.

72. See #63.

73. See #64.

74. See #65.

75. Yes.

76. See #67.

77. See #68.

78. Yes.

79. J. Szafranski and J. Lafferty.

80. See #62.

81. See #63.

82. See #64.

83. See #65.

84. See #67.

85. See #67.

86. See #68.

87. See #68.

Plaintiffs' Answers to Interrogatories.

98.	See text of plaintiffs memorandum to the court dated March 26th, 1968.
102.	Yes.
103.	Yes.
104.	All of the plaintiffs submitted to such procedure.
105.	See 962.
106.	On information and belief, No.
107.	Not required.
108.	Not required.
109.	Not required.
110.	Not required.
111.	Not required.
112.	Not required.
113.	Not required.
114.	On information and belief, No.
115.	No.
116.	Not required.
117.	Not required.
118.	Not required.
119.	Not required.
120.	Not required.
121.	Not required.
122.	Not required.
123.	Not required.

Plaintiffs' Answers to Interrogatories.

124. On information and belief, No.

125. On information and belief, No.

126. Not required.

127. Not required.

128. Not required.

129/ Not required.

130. Not required.

131. Not required.

132. Not required.

133. Not required.

134. On information and belief, No.

135. On information and belief, No.

136. Not required.

137. Not required.

138. Not required.

139. Not required.

140. Not required.

141. Not required.

142. On information and belief, No, with the exception of W. Swiercz, John Fic, and James Womeldorf.

143. Stated in the above answer.

144. Complete approval.

145. Upon retainer of counsel.

146. On information and belief, No.

147. Not required.

Plaintiffs' Answers to Interrogatories.

148. Not required.

149. Not required.

150. On information and belief, No.

151. Not required.

152. Not required.

153. Not required.

154. Not required.

155. Not required.

156. Not required.

Respectfully submitted,

SCOTT & DONUM
Attorneys for Plaintiffs
Office and Post Office Address
45 Court Street
Buffalo, New York 14202
854-0850

By: William D. Scott, Esq.

TO: Hodgson, Russ, Andrews, Woods, Goodyear.
1 M. & T. Plaza
Buffalo, New York

Thomas E. Krug, Esq.
300 Edwards Building
Buffalo, New York

Michael Gottesman, Esq.
1001 Connecticut Avenue N.W.
Washington, D.C.

Exhibit "1" Attached to Plaintiffs' Answers.

NAME	SYM. & NO.	STATUS
William W. Atkinson	422-131	Supervision
Joseph L. Baxter	422-395	Retired
Frank E. Berger	422-182	Supervision
James M. Bockrath	422-117	Deceased
Dennis J. Botticelli	432-173	Quit
Walter F. Bratek	432-54	Supervision
Joseph Brown	422-75	Retired
John J. Byrne	432-52	Retired
Albert Cherry	422-350	Supervision
Dennis M. Couhig	422-412	Quit
Julius DeSantis	422-41	Retired
Charles Doane	422-455	Quit
Stephen T. Fincel	432-146	Quit
Gerald R. Franklin	422-379	Supervision
Albert J. Gardner	422-158	Supervision
Joseph J. Gorski	422-510	Supervision
Willard H. Haas	422-369	Supervision
John B. Havens	422-248	Retired
John L. Healy, Jr.	422-249	Transfer
Thomas L. Holden	432-41	Retired
Charles Hrisko	422-153	Quit
William J. Hughes	422-394	Quit

EXHIBIT " 1 "

Exhibit "1" Attached to Plaintiffs' Answers.

Leo Kaczor	422-230	Supervision
Anthony B. Kayes	422-466	Supervision
Albert C. Kerns	422-149	Retired
Albert D. Logalbo	433-37	Quit
Robert A. Lummel	422-580	Quit
Arthur Madigan	422-422	Quit
Joseph Manno	422-133	Supervision
William H. Meden	422-240	Supervision
Wamm H. Moulton	432-128	Quit
Howard K. Penfold	432-102	Supervision
William E. Phillips	422-81	Transfer
Frank Potosnak	422-162	Retired
Edward M. Praybyla	422-64	Quit
Lawrence J. Ralph	432-162	Supervision
Walter A. Rindfleisch	422-280	Supervision
Joseph A. Schmitt	422-27	Supervision
Kenneth M. Serena	422-213	Retired
Walter J. Siemkiewicz	422-78	Supervision
Boleslaus F. Siberski	422-53	Supervision
Earl Snyder	432-61	Deceased
Leonard M. Synoradzki	422-29	Supervision
Charles W. Weidinger	422-256	Quit
Anthony J. Ziccarelli	422-67	Supervision

Exhibit "1" Attached to Plaintiffs' Answers.

Samuel A. Alessi	432-183	Supervision
Milton C. Ast, Jr.	432-189	Quit
Richard G. Chudzik	422-483	Quit
John L. Clark	422-90	Quit
Richard A. Coe	422-562	Supervision
Roy Culver	422-40	Supervision
John Dukich	422-511	Quit
Herman Fortham	422-215	Retired
Fred G. Hillman	422-364	Retired
Robert C. Knaier	432-96	Quit
Joseph Porto	432-39	Quit
Leonard A. Sass	432-185	Quit
Harold A. Seifert	422-138	Supervision
Raymond D. Sitarek	422-555	Army
Ronald J. Solem	422-497	Quit

Exhibit "2" Attached to Plaintiffs' Answers.

4 : 11

P.W.P

SUBSIDIARY COMPANIES OF BETHLEHEM STEEL CORPORATION

Lackawanna, N. Y.
PLANT

UNITED STEELWORKERS OF AMERICA—Local Union No. 2604

E 3139

REQUEST FOR ADJUSTMENT OF GRIEVANCE

2625 (Rev.A 10-58)

Name of Employee	Name of Foreman
Various	H. Jackson
Department and Symbol Number: Continuous Sheet, Strip & 422 Mech. Maintenance /Plate Mills	Date Grievance Presented to Foreman: 6-24-60
Occupation: See attached sheet	Name of Department Steward: J. Szafranski - J. Lafferty

Employee's Statement of Grievance

The Union disagrees with the new rate instituted by the company on the following positions (see attached sheet) The Union maintains that the above positions are direct workers instead of indirect and should be paid as such; also the Union disagrees with the test representative period that the company has used for the method of payment. The Union requests Management to pay the above positions retroactive pay. The Union also contends that the rates are unreasonable and unfair. This request is made pursuant to Article V, section 2(c), paragraph 3 of the Agreement.

6-24-60

Signature of Employee: Richard Rubinzal — Date

Disposition of Grievance by Foreman

This rate is proper under the May 25 Agreement.

Signature of Foreman: H Jackson — Date: 6-30-60

Date of Appeal by Shop Steward to Superintendent of Department: June 29-1960

Disposition of Grievance by Superintendent of Department: William Downs

This rate fulfills Management's obligations under the May 25 Agreement.

Signature of Superintendent: J Adagna — Date: 7/9/60

(Superintendent's Copy)

Date of Appeal by Grievance Committee to Management's Representative: [illegible] 7/12/60

Exhibit "2" Attached to Plaintiffs' Answers.

SUBSIDIARY COMPANIES OF BETHLEHEM STEEL CORPORATION

Lackawanna, N. Y.
PLANT

UNITED STEELWORKERS OF AMERICA—Local Union No. 2604 B 3141

REQUEST FOR ADJUSTMENT OF GRIEVANCE

2625 Rev. A 10-50

Name of Employee: Various	Name of Foreman: W. H. Pruss
Department and Symbol Number: Continuous Sheet, Strip 432 - Elec. Main. & Plate Mills	Date Grievance Presented to Foreman:
Occupation:	Name of Department Steward: J. Szafranski - J. Lafferty

Employee's Statement of Grievance

The Union disagrees with the new rate instituted by the company on the following positions—(Motor Room Operator, Motor Room Attendant "A" Motor Room Attendant "B", Motor Room Attendant "C", Motor Room Attendant Helper, Crane Millwright, Crane Repairman "A", Crane Repairman "B", Crane Repairman "C", Crane Repairman Helper, Crane Oiler, Motor Inspector, Electrical Repairman "A", Electrical Repairman "B", Electrical Repairman "C", Electrical Helper, Electrical Oiler. The Union maintains that the above positions should be direct workers instead of indirect and should be paid as such; and also disagrees with the test representative period that the company has used for the method of payment. The Union requests Management to pay the above positions retroactive pay. The Union also contends that the rates are unreasonable and unfair. This request is made pursuant to Art. V, section 2 (c), Para. 3 of the Agreement.

Signature of Employee: [illegible] Date: 6/1/60

Disposition of Grievance by Foreman

This rate fullfills Management's obligations under the May 25 agreement.

Signature of Foreman: William Pruss Date: 6/17/60

Date of Appeal by Shop Steward to Superintendent of Department: 6-19-60

Disposition of Grievance by Superintendent of Department

This rate is proper under the May 25 Agreement.

Signature of Superintendent: Date:

(Superintendent's Copy)

Date of Appeal by Grievance Committee to Management's Representative: USWA 7/15/60

Court Interrogatories.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

LAURENCE NOLAN and RIVERS OWENS,

Plaintiffs

-vs- Civil 11,892

THE BETHLEHEM STEEL CORPORATION and
THE UNITED STEELWORKERS OF AMERICA,

Defendants

The court has received and examined the affidavits, depositions and briefs filed by the parties in support of their motions for summary judgment. The plaintiffs' objection to the late filing of the defendant Bethlehem Steel brief is overruled. The court will accept the brief filed on or about March 8, 1973.

The court agrees with the position of all parties that oral argument may be helpful to resolve the numerous and complex issues in this case. However, before listening to oral argument, the court deems that it would be most helpful if answers in the form of affidavits or briefs should be filed by the parties to the

Court Interrogatories.

following questions. See Rule 56, Fed.R.Civ.P.

(1) Do the affidavits of Mr. Evenden and Mr. Williamson attached to the Bethlehem Steel motion correctly set forth the "Plan"? If not, explain why.

(2) Do the affidavits of Mr. Trost and Mr. Theis attached to the motion of defendant Steelworkers correctly set forth the history of the negotiation between Bethlehem and the Steelworkers, of the grievances between them and particularly grievances B-3139 and B-3141? If not, explain why.

In paragraphs 10 to 24 of his affidavit in support of his motion, plaintiffs' attorney discusses the difficulty of now computing the retroactive payments because of the loss of records. Bethlehem asserts that, although the records are lost, the retroactive payments can still be computed fairly. Furthermore, Bethlehem asserts that the computation of these retroactive payments should be the subject of a grievance rather than this lawsuit. (3) Do the parties agree that the retroactive payments can now be computed? (4) Do the parties agree that the computation of retroactive payments be the subject

Court Interrogatories.

of a grievance rather than this lawsuit? Explain your position.

In paragraphs 25 and 26 of his affidavit, plaintiffs' attorney charges that Mr. Jardin informed the umpire incorrectly about the state of the grievances and the payment of retroactive wages. In addition, he refers to Mr. Jardin's statement in his deposition that he went to arbitration "with my tongue in my cheek". Defendants' position is that, even if Mr. Jardin was incorrect in his statement about the retroactive payments, the umpire was aware of the true facts. (5) Explain what Mr. Jardin did or failed to do which constituted failure of fair representation.

In paragraph 30 of his affidavit, plaintiffs' attorney claims that certain rights of plaintiffs were (6) lost because of untimely Union action. Is he correct in this respect? Explain. If the Union proceeded in an untimely fashion, did this failure rise to the level of lack of fair representation?

Plaintiffs claim that the "representative test period" used by Bethlehem was unfair to the plaintiffs.

Court Interrogatories.

The Union's position is that the test period selected was probably favorable to the Union members. Explain why the test period was either fair or unfair. If it was unfair, how did the Union's acquiescence in it constitute lack of fair representation under the law?

The parties may attach additional affidavits, keeping in mind the answering affidavits filed by the other parties, the briefs and the questions posed by the court. The parties may also file such additional briefs or exhibits which are appropriate to explain their positions.

These filings shall be completed not later than April 3, 1973. The court will hear oral argument on April 6, 1973 at 11:00 a.m.

So ordered.

JOHN T. CURTIN
United States District Judge

DATED: March 16, 1973

Plaintiffs' Answers to Court Interrogatories.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

LAWRENCE RALPH AND DIVERS OTHERS

Plaintiffs

vs

MEMORANDUM OF LAW
Civil No. 11,892

THE BETHLEHEM STEEL CORPORATION and
THE UNITED STEELWORKERS OF AMERICA

Defendants

This Memorandum is submitted in accordance with the direction of the Court dated March 16, 1973.

QUESTION No. 1: Do the affidavits of MR. EVENDEN and MR. WILLIAMSON, attached to the Bethlehem Steel Motion, correctly set forth the "plan"?

ANSWER: Yes, with the exception that the plaintiffs herein are not satisfied that the defendant, BETHLEHEM STEEL CORPORATION has no obligation to meet the tests of "equitable compensation" as is alleged on page 3 of Mr. Evenden's affidavit. The decision of the umpire dated February 25, 1959, was made prior to the January 4, 1960, Memorandum of Understanding. The Memorandum of BEN FISHER, which is before the Court, refers in great detail to the equitable compensation principle and how it will effect the plaintiffs.

Further, the plaintiffs do not concede that the various examples and sample calculations contained in the affidavits of MR. WILLIAMSON and MR. EVENDEN such as that contained on page 12 of the WILLIAMSON affidavit in any way state the true facts with regard to the plaintiffs and their retroactive wage claim. The company is always prepared and extremely expert in creating hypothetical situations with various built-in assumptions which lead to the inevitable conclusion in every case that if the plaintiffs are entitled to anything at all

it is probably only thousandths of a cent per hour. If this action is tried, the company will finally be required to state in dollars and cents precisely how much was paid to the direct production workers and will not be able to rely on their hypothetical presumptions, assumptions, and conclusions.

But to specifically answer the question put by the Court, we do agree that the affidavits in question correctly set forth the method by which the plaintiffs are paid incentive wages.

QUESTION No. 2 Do the affidavits of MR. TROST and MR. THEIS attached to the motion of the defendant, STEELWORKERS, correctly set forth the history of the negotiation between Bethlehem and the Steelworkers, of the grievances between them and particularly grievances B3139 and B3141? If not, explain why.

ANSWER: The affidavits of Mr. Trost and Mr. Theis do set forth in proper chronological order the various steps and proceedings had with respect to grievances B3139 and B3141.

The plaintiffs do not concede what "purpose in mind" Mr. Theis or any of his associates had in agreeing with the arbitrator in November of 1964, that there were no open issues remaining in the plaintiffs' grievances. Further, throughout both the affidavits of Mr. Trost and Mr. Theis there are various judgments and conclusions made by these individuals concerning the handling of plaintiffs' grievances and the plaintiffs do not at this time concede the accuracy or wisdom of those conclusions and judgments. Finally, the plaintiffs do not agree that umpire RALPH SEWARD, issued his award

based strictly on the history of the grievances to date. A reading of the transcript of that grievance proceeding will show that the actions and/or inactions of the Union representatives in particular, MR. JARDIN, had a great deal to do with the decision.

Question No. 3 Do theparties agree that the retroactive payments can now be computed?

ANSWER: No. The retroactive payments cannot now be computed. First, the Memorandum which is before the Court as an Exhibit between G.M. BRYSON and J.S. FERGUSON, from the industrial engineering department of the defendant, BETHLEHEM STEEL COMPANY makes this clear. Throughout the Memorandum it is admitted that accurate calculations of monies due the plaintiffs is impossible because of the loss of the payroll production records necessary.

Further, the hot mill proper and tandem mill, are two of the production units which control any retroactive payment due to the plaintiffs. That through the mishandling of their grievances in November of 1962, the Union was forced to accept the retroactive payment for those two production units, which it did not agree with, because it failed to exercise a timely right of appeal. Therefore, not only are the production records lost or misplaced, but the actual dollar amounts paid in retroactives to the hot mill proper and tandem mills are insufficient according to the Union but nothing can be done about it because of the Union's failure to Appeal.

Question No. 4 Do the parties agree that the computation of retroactive payments should be the subject of a

grievance rather than this lawsuit?

ANSWER: No, the Vaca decision, and cases following including Steinman vs Spector Freight Systems, Inc. 441 F 2nd 599 (1971) make it clear, that if a triable issue of fact exists as to the unions breach of the duty of fair representation and further if a triable issue of fact exists with regard to whether or not the company has breached its agreement with the employees, that the plaintiffs are entitled to a trial. Both the company and the union would have us return to arbitration for further proceedings and this is understandible. If the defendants in this action had their way, no one would ever be allowed to step outside the arbitrator's office on any question arising out of the contract. Both defendants in this action seek to overly complicate the issues in this case, in an effort to convince the Court that no one but a contract and grievance expert can properly resolve the question. The plaintiffs on the other hand maintain quite simply that through all of the discovery proceedings, through the papers before the court, and through the admissions of employees of both the union and the company it is obvious that a debt exists to the plaintiffs which the company and the union has been aware of since at least 1962. If a debt exists, it must, of necessity, arise out of a breach of the collective bargaining agreement by the company. Second, we maintain that although all of the production workers involved received payment in 1962 and 1964, nothing was paid to the indirect workers "for reasons now unknown" (Memorandum between Mr. Bryson and Mr. Ferguson) we are entitled at this point to a jury trial on these questions and to a determination in Court as to

Plaintiffs' Answers to Court Interrogatories.

whether or not the duty of fair representation has been breached, and if so, to have a jury fashion an appropriate remedy within the guidelines set down in Vaca. To return this action to the grievance procedure, would be ridiculous. Once a grievance has been mishandled, and the rights of the plaintiffs abused, and the duty of fair representation breached, clearly the plaintiffs cannot be required to rely again upon the same union to process additional grievances a second time around.

Question No. 5 Explain what Mr. Jardin did or failed to do which constituted failure of fair representation.

Answer: First, in spite of the desire of the employees of the local level, including the plaintiffs, to process grievance B3139 and B3141 to arbitration, Mr. Jardin did so with "my tongue in my cheek." Further, the only reason he was there in the proceeding before the arbitrator was because the plaintiffs wished to arbitrate and not because he had any interest in doing so. The manner in which he handled said arbitration reflects his own lack of interest in the proceeding. Second, he had more than one opportunity between 1961 and 1964 at each of the various stages the plaintiffs' grievances went through to make it known to the arbitrator that the plaintiffs were not being paid while the direct production workers were being paid. Third, at the final arbitration hearing in November of 1964 he again sits quietly by while the arbitrator dismisses the grievances with no indication being given that direct workers had already been paid, some as early as two years previously. It is theposition of the plaintiffs that Mr. Jardin's mishandling of the plaintiffs' grievances throughout the course of their history as well as his mishandling of the hot mill proper and

tandem mill grievances are responsible together for the losses the plaintiffs have suffered. There is nothing in the decision of the umpire dated July of 1965 nor in the transcript of those proceedings which indicates that the umpire was in fact aware of the true facts as stated in this courts memorandum.

Question No. 6 In Paragraph 30 of his affidavit, the plaintiff's attorney claimed that certain rights of plaintiffs were lost because of untimely union action. Is he correct in this respect? Explain.

ANSWER: By the inaction of Mr. Jardin and other union officials concerning the two production grievances referred to in Paragraph 30, the plaintiffs were deprived of 67% of whatever amount the Union felt the direct workers were entitled to by way of a retroactive. As stated in the paragraph, the Union was not satisfied with the retroactive which the company was willing to pay, but was forced to accept it through their own default in failing to object to the award. Therefore, if the Union was not satisfied, and if a higher amount was in fact payable, to the direct workers, then the plaintiffs have lost their share of this higher amount through the inaction of their union representative. As to whether or not this specific act rises to the level of the lack of fair representation, you must keep in mind that if we isolated any one action or failure to act on the part of the union or company, a case could be made that the person responsible simply made a mistake, and should not be held responsible, But all of the proceedings involved in this action are directly related to the handling of the production grievances involving new incentive plans and to the plaintiffs' grievances which are based on those new incentive plans. Taken

as a package, the over-all handling of the production grievances as well as the plaintiffs' grievances clearly raises a triable issue of fact on the question of whether or not all of these affairs were handled in an arbitrary, perfunctory, or capricious manner.

Question No. 7 The union's position is that the test period selected was probably favorable to the union members. Explain why the test period was either fair or unfair.

ANSWER: Both the union and the company throughout their affidavits suppose that various things would be true and speculate that certain results would follow. The May 25, 1956, agreement required that "in the absence of special circumstances the most representative test period will be the period of three months next preceeding the date on which an existing incentive plan shall be replaced by a new incentive plan. In our case, the incentive took effect in April of 1960, and the representative test period chosen was three weeks before a major strike in 1959 and eleven weeks after said strike. In all of the pretrial discovery, no satisfactory explanation was given for the use of this period instead of the three month period just prior to the institution of the plan. Company officials stated that it was impractical to use the three-month period described in the agreement. Further, page 13 of the affidavit of Mr. Theis simply says "to the best of my knowledge, I have never been made aware of any information establishing that this particular period would have been abnormal." It is not up to any employee or anyone else to make Mr. Theis aware of such information. It is his job to know that the period is representative and that term

by the way, has been defined in pretrial discovery as a normal operation. No one throughout pretrial discovery seem to know nor had any comparison been made of this test period with the three month period immediately preceeding the institution of the plaintiffs' rate. All we know for sure, is that sometime subsecuent to the filing of the plaintiffs grievance, the issue regarding the past representative test period was withdrawn by the union. They give no reason for the withdrawl and they give no reason for their acceptance of the test period as representative. The unions accuiescence to this period was done with no attempt whatsoever to run a similar test period comparison between old and new plans for the three month period immediately prior to the institution of the plaintiffs new rate. This is the recuired method under the May 25 agreement and no effort was made by the company to run such a comparison. Further, no such comparison was even requested by the union. Everyone simply accepted a split test period two weeks before and eleven weeks following a major strike all of which took place at least three months before the institution of the plaintiffs rate in violation of the May 25 agreement. The plaintiffs maintain that there cannot be anything ordinary and normal about plant operations before or after a strike. That although operations just before the strike would probably be above normal, operations after the strike would not be normal for quite some time. Further, the plaintiffs were entitled at the time of the institution of their rate, to have a test period selected from the three months immediately preceeding the institution of their rate as per the May 25 agreement. No effort was made to do this, and we now understand that this too

is impossible to accomplish. In any case, without more knowledge of the representative test period, used as well as some knowledge of the proper three month period, the union abused its discretion in withdrawing that issue from the plaintiff's grievances.

Respectfully submitted,

WILLIAM D. SCOTT
Attorney for plaintiffs
Office and P.O. Address
605 Brisbane Building
Buffalo, New York

Dated: April 3, 1973

Defendant Bethlehem Steel Corporation's Answers to Interrogatories Propounded by the Court.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

LAWRENCE RALPH and DIVERS OTHERS,

Plaintiffs,

-vs-

THE BETHLEHEM STEEL CORPORATION and THE UNITED STEELWORKERS OF AMERICA,

Defendants.

Civil Action No. 11,892

ANSWERS TO INTERROGATORIES PROPOUNDED BY THE COURT

The defendant Bethlehem Steel Corporation presents the following Answers to the Interrogatories propounded by the Court:

I. QUESTION: Do the affidavits of Mr. Evenden and Mr. Williamson attached to the Bethlehem Steel motion correctly set forth the "plan"? If not, explain why.

ANSWER: The affidavits of Mr. Evenden and Mr. Williamson set forth the facts pertaining to the implementation and operation of the incentive plan established for the electrical and mechanical maintenance employees in the Strip Mill, the plaintiffs herein. The actual plans are attached as Exhibits 1 and 2 to the affidavits of Messrs. Evenden and Williamson.

II. QUESTION: Do the affidavits of Mr. Trost and Mr. Theis attached to the motion of defendant Steelworkers correctly set forth the history of the negotiation between Bethlehem and the Steelworkers, of the grievances between them and particularly grievances B-3139 and B-3141? If not, explain why.

ANSWER: The affidavits of Messrs. Trost, Theis and Evenden set forth an accurate summary of the processing of the grievances involved in this action. The best evidence of the issues presented and the positions taken by the Union and the Company in the course of the grievance procedure is set forth in the record of the

proceedings. Although the complete record of the proceedings in both grievances would unduly burden the record on this motion, a complete account of the issues presented and the positions taken by the parties is set forth in the minutes of the Third Step Meeting, Grievances No. B-3139 and B-3141, dated May 1, 1961, (Bethlehem Exhibit 5, Cummings affidavit) and the minutes of the Fourth Step Meeting, Grievances No. B-3139 and B-3141, dated October 1, 1963, (Bethlehem Exhibit 6, Cummings affidavit). These minutes, reviewed together with the minutes of the Joint Incentive Committee meeting, June 2, 1964, (Exhibit C, Theis affidavit) and the Umpire's Decision No. 1138, dated July 12, 1965 (Exhibit D, Theis affidavit) provide a full account of the processing of these grievances. For the convenience of the court we are also attaching hereto the chronology of the processing of both grievances, designated Bethlehem Exhibits 7 and 8.

III. QUESTION: A. Do the parties agree that the retroactive payments can now be computed?

B. Do the parties agree that the computation of retroactive payments be the subject of a grievance rather than this lawsuit? Explain your position.

ANSWER: A. Certain of the accounting department records used by the Company in computing the incentive earnings of the direct workers are missing so that the Company cannot make the usual computation as to what, if any, retroactive payments may be due the plaintiffs. However, by a comparison of earnings before and after June 10, 1962 the Company has arrived at an alternative computation of retroactive payments which is set forth in Mr. Williamson's affidavit in detail. It seems clear that retroactive payments to the plaintiffs based on this computation would be fair and equitable.

Defendant Bethlehem Steel Corporation's Answers to Interrogatories Propounded by the Court.

B. Any issue as to the retroactive payments should be resolved in the grievance procedure - the exclusive remedy under the collective bargaining agreement for determining matters such as this. (Pages 18-20 Memorandum of Law in Support of Bethlehem's Motion for Summary Judgment)

IV. QUESTION: Explain what Mr. Jardin did or failed to do which constituted failure of fair representation.

V. QUESTION: In paragraph 30 of his affidavit, plaintiffs' attorney claims that certain rights of plaintiffs were lost because of untimely union action. Is he correct in this respect? Explain. If the union proceeded in an untimely fashion, did this failure rise to the level of lack of fair representation?

ANSWER TO QUESTIONS IV and V: Defendant Bethlehem has no evidence of any failure of representation of the plaintiffs in this action by Mr. Jardin or any other union representative.

VI. QUESTION: Explain why the test period was either fair or unfair. If it was unfair, how did the union's acquiescence in it constitute lack of fair representation under the law?

ANSWER: The issue as to the representative test period was not dealt with in the affidavits of Messrs. Evenden and Williamson, since Bethlehem considered that that issue had been fully litigated and resolved in the grievance procedure. However, since the issue has now been raised by the plaintiffs' attorney, and in response to the question propounded by the Court, defendant Bethlehem has attached the supplemental affidavit of Rae Williamson explaining the method of implementing the representative test period.

Respectfully submitted,

HODGSON, RUSS, ANDREWS, WOODS & GOODYEAR

By _____
John E. Dickinson, Esq.

TO: WILLIAM D. SCOTT, ESQ.
BREDHOFF, GOTTESMAN & COHEN

Letter Dated April 3, 1973.

April 3rd, 1973

Honorable John T. Curtin
United States District Court
Buffalo, New York

Re: Lawrence Ralph and Divers Others vs.
The Bethlehem Steel Corporation and
The United Steelworkers of America
Civil Action No. 11,892

Dear Judge Curtin:

On behalf of the defendant United Steelworkers of America this letter is in response to your order dated March 16, 1973. Since most of the questions raised in said order by their terms do not seek responses from the Steelworkers, we shall confine our comments here to those which do.

First, the Steelworkers believe that, notwithstanding the loss of records, a satisfactory alternative method for computing and distributing retroactive payments can be arrived at by the parties. Further, insofar as any dispute may arise concerning the actual amounts of retroactive payments to which each of the affected employees is entitled, the Steelworkers note that such a dispute - like all other disputes concerning the meaning, application, or interpretation of collective bargaining agreements - is properly the subject of the grievance arbitration procedure. See Section 5(e), Supplemental Agreement of May 25, 1956 (Exhibit "A" to the Theis affidavit). In such circumstances, that procedure is the exclusive remedy and plaintiffs cannot file a lawsuit to enforce their asserted contract rights. See, for example, Republic Steel Corp. v. Maddox, 379 U.S. 650.

Second, insofar as the "representative test period" used by Bethlehem, the Steelworkers' position has been explained in the affidavits of Irving C. Trost at paragraph 12, pages 6-8 and William J. Theis at paragraph 15, page 13.

Letter Dated April 3, 1973.

(2)

Honorable John T. Curtin April 3rd, 1973

Third, as to the allegations in paragraph 30 of the affidavit submitted by plaintiffs' attorney, William D. Scott, it should be emphasized that the two grievances (i.e. B-2137 and B-2236) related to "direct" workers in the Hot Strip Mill and Tandem Mill, not to the indirect workers upon whose behalf Attorney Scott filed the instant suit. Further, as reflected in the attached Supplemental Affidavit of Irving C. Trost, the reason why the Union did not complain to the Company on or before July 25, 1961 concerning the revised rates which it had put into effect was because it was the Union's judgment that there was no meritorious basis for challenging those revised rates.

Sincerely,

BREDHOFF, GOTTESMAN & COHEN

By George H. Cohen (ms)
George H. Cohen
Attorneys for Defendant United
Steelworkers of America

GHC:kb

cc: John E. Dickinson, Esq.
William D. Scott, Esq.

Notice of Motion for Summary Judgment.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

LAWRENCE RALPH and DIVERS OTHERS,

Plaintiffs,

vs.

THE BETHLEHEM STEEL CORPORATION and THE UNITED STEELWORKERS OF AMERICA,

Defendants.

Civil Action No. 11,892

NOTICE OF MOTION

Pursuant to Rule 56(c) of the Federal Rules of Civil Procedure, the Defendant, BETHLEHEM STEEL CORPORATION, hereby moves for summary judgment and dismissal of the Complaint against it on the ground that there is no genuine issue as to any material fact and the Defendant, BETHLEHEM STEEL CORPORATION, is entitled to judgment as a matter of law, and in the alternative, this Defendant moves under Rule 12 to dismiss the Complaint for lack of jurisdiction over the subject matter.

Respectfully submitted,

HODGSON, RUSS, ANDREWS, WOODS & GOODYEAR
By _____
John E. Dickinson
Attorneys for Defendant, Bethlehem Steel Corporation
Office and Post Office Address
One M & T Plaza
Buffalo, New York 14203
Telephone: 856-4000

TO: WILLIAM D. SCOTT, Esq.
Attorney for Plaintiff
Office and Post Office Address
43 Court Street
Buffalo, New York 14202

Affidavit of H. D. Evenden in Support of Summary Judgment.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

LAWRENCE RALPH and DIVERS OTHERS,

Plaintiffs,

vs.

Civil Action No. 11,892

THE BETHLEHEM STEEL CORPORATION and THE UNITED STEELWORKERS OF AMERICA,

AFFIDAVIT IN SUPPORT OF SUMMARY JUDGMENT

Defendants.

STATE OF NEW YORK)
) ss:
COUNTY OF ERIE)

H. D. EVENDEN, being duly sworn, deposes and says:

That he holds the position of Management's Representative with the Bethlehem Steel Corporation (hereinafter called "Company") and is responsible for the Company's industrial relations at its plant operations at Lackawanna, New York.

That as Management's Representative he is generally familiar with the facts and circumstances out of which this action arises. Many of the facts set forth herein were compiled from Company records and documents under his overall control.

The sole issue in this action is the payment of retroactive benefits claimed to be due to electrical and mechanical maintenance employees in the strip mill because of adjustments made in the incentive plans of the direct workers. This affidavit, and that of Rae Williamson, are offered to establish:

1. That all of the claims involved in this action are matters which have either been resolved by the Company and Union in their contractual grievance procedure, or should be resolved therein, and,

2. That the Company has not engaged in improper conduct, or collusion with the Union in the course of resolving the claims

at issue therein within the grievance procedure, and

3. The action against Bethlehem is without merit and summary judgment should be granted.

COLLECTIVE BARGAINING CONTRACT PROVISIONS

On or about May 25, 1956, the Company and the United Steelworkers of America (hereinafter called "Union") executed a Supplemental Agreement (hereinafter called the "1956 Agreement") as a supplement to the collective bargaining agreement in effect between the Company and the Union.

Section 5(a) of the 1956 Agreement provided in substance that the Company would review existing incentive plans used to compensate employees that did not utilize as their incentive base rates the applicable Standard Hourly Wage Rates (SHWR) and replace these plans with new incentive plans that use SHWR as the incentive base rates. Wherever the term "new plan" or "new incentive plan" is used in this affidavit or that of Rae Williamson, it is intended to mean the revision of an existing incentive plan to bring it into compliance with Section 5(a) of the 1956 Agreement.

Section 5(b) of the 1956 Agreement provided in substance that new incentive plans established in accordance with the 1956 Agreement would "meet the requirement that, over a past representative test period, the average hourly earnings of all the Employees assigned to a job under such new plan would not have been less under such new plan than the average hourly earnings received by all the Employees assigned to that job during such period under the incentive plan which it replaced."

Section 5(d) of the 1956 Agreement defined "past representative

test period" as "in the absence of special circumstances, the period of three months next preceding the date on which an existing plan shall be replaced by a new incentive plan in accordance with the provisions of this Section."

Article V, Section 2(c) of the collective bargaining agreement provides a different test for employees' earnings in cases where incentive plans are adjusted or replaced due to changes in equipment, processes and technology, and the latter contract provision has no application in this action.

On or about January 4, 1960, the Company and the Union executed a Memorandum of Understanding (hereinafter called the "1960 Agreement") which outlined requirements as to the method of compensation that had to be met for incentive plans established under Article V, Section 2 of the collective bargaining agreement.

Article V, Section 2 of the collective bargaining agreement, and the tests set forth in the 1960 Agreement have no application to the incentive plans at issue in this lawsuit. The subject plans, as will be explained below, were established pursuant to Sections 5(a) and 5(b) of the May 25, 1956 Agreement, and not as the result of the provisions of Article V, Section 2 of the collective bargaining agreement, and the 1960 Agreement.

Thus, the sole test which the plans at issue in this case must meet is the standard provided in Section 5(b) of the 1956 Agreement. In an early decision the impartial arbitrator, appointed by the parties pursuant to their collective bargaining agreement, ruled on this issue. (Impartial umpire decision NL 520,

February 25, 1959, Exhibit B, attached to affidavit of William J. Theis.) In dealing with this question, the umpire observed that where an incentive plan is subject to Section 5(b) of the 1956 Agreement, "the only inquiry permitted him is into the question of whether the plan meets the test of comparative earnings during the 'past representative test period', provided in that section." (Umpire award, page 6.) Later in this same award, the umpire observed, "This is the sole standard set forth in that section. The fact that in periods of increased or decreased production - - - i.e., periods in which production exceeds or falls below the levels achieved during the 'past representative test period' - - - earnings under the new plan may not be the same as under the old is clearly irrelevant in applying the standard." (Umpire award, page 8.)

On or about the dates indicated below the Company established incentive plans pursuant to the 1956 Agreement, to measure compensation of production employees in the following units of the strip mill at its Lackawanna plant:

Department	Date
Tandem Mills	April 12, 1959
Hot Mill Proper	May 3, 1959
Annealing	November 29, 1959
Continuous Picklers	February 28, 1960
Skin Mills #2, 3 & 5	April 10, 1960

The above listed incentive plans are hereinafter referred to as "direct plans" [1/] since they deal with compensation of production

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1/ For the purposes of its impact on Electrical and Mechanical Maintenance workers, the Annealing incentive plan has always been treated as a direct plan, even though all Annealing employees have been paid on an indirect basis since 1962.

employees whose contribution to the output of the strip mill is susceptible to direct measurement and is therefore termed "direct".

On or about April 17, 1960, the Company also established incentive plans covering Hot Mill shipping and Cold Mill shipping operations in the strip mill. However, unlike the plans referred to above, these two plans were not designed to compute the compensation to be paid to employees working in the Hot and Cold Mill shipping operations. Rather, they were designed solely as a device to provide an input to the incentive plans established for the "indirect" employees who performed mechanical and electrical maintenance functions in various small finishing and shipping operations of the strip mill.

On or about April 17, 1960, pursuant to the 1956 Agreement, the Company established two similar incentive plans, one for employees working in electrical maintenance jobs in the strip mill and one for employees working in mechanical maintenance jobs in the strip mill. These plans are hereinafter collectively referred to as the "indirect plan" since they deal with compensation of maintenance employees whose contributions to production are not susceptible to direct or accurate measurement. (Copies of the incentive plans as installed on April 17, 1960 are attached hereto as Exhibits 1 and 2.)

The indirect plan is based on the performance of the seven production units of the strip mill described above.

"Percent performance" is a term used to measure the direct unit's contribution to the indirect plan. Under this

system, common to most of the Company's incentive plans, an employee begins to earn incentive pay above his SHWR at the point that his output exceeds 74% of his unit's maximum possible output under optimum conditions. This measurement is accomplished through the use of "standard minutes" assigned as explained in the affidavit of Rae Williamson. The percentage which represents the relationship between actual time spent in the performance of tasks and the standard minutes assigned to those tasks, is designated percent performance. The percent performance of each contributing direct unit is weighted to reflect the indirect employees' role in the respective direct units, and then averaged to arrive at a percent performance for indirect employees. Indirect employees' incentive compensation is then based on 67% of the amount by which their percent performance exceeds the standard (74% of the maximum output under optimum conditions).

IMPLEMENTATION OF THE INDIRECT PLAN

On or about April 17, 1960, when the Company established the indirect plan for the electrical and mechanical maintenance employees, it utilized a "representative test period" as required by Section 5(b) of the 1956 Agreement.

The test period used ran from July 5, 1959 through January 30, 1960, excluding the weeks ending July 18, 1959 through November 7, 1959 when the Lackawanna Plant was closed because of a labor dispute.

In accordance with Section 5(b) of the 1956 Agreement, the Company compared the electrical and mechanical maintenance employees' average hourly earnings under the former incentive

plan during the test period referred to above, with the average hourly earnings that would have been paid during the same period if the newly established incentive plan had been used.

In the course of this comparison, it became apparent that during the test period the average hourly earnings calculated under the old incentive plan exceeded earnings under the new incentive plan. It is not unusual for this situation to occur. An examination of the many plans installed throughout the plant reflects the same situation - lower earnings under the revised standards. In order to comply with its obligation under Section 5(b) of the 1956 Agreement, the Company had adopted a procedure for equalizing the earnings whenever the representative test period reflected this situation. The procedure involved the establishment of an "Incentive Adjustment" (IA). In this case, as well as in many other incentive plans at the plant, the IA constituted an "add on" which represented the difference in average hourly earnings between the old and new incentive plans during the representative test period. This IA varies in amount with each job. However, within each job it remains constant and is added to each hour's pay earned on incentive work, regardless of the unit's actual percent performance.

Once the IA is established, it continues in effect until circumstances develop requiring a change. If, after the IA is set, the employees' performance dramatically rises, the employees will receive not only the earnings resulting from their increased performance, but also the same IA payments that were set based on

the test period.

The IA does change when there is a general contract wage increase, when the contractual percentage is changed by contract, and also when adjustments are made in the original incentive plans such as are involved in this litigation. Thus, the original IA established for the indirect plan on April 17, 1960 was slightly increased on December 1, 1960 to reflect the general contract increase that went into effect on that date. Correspondingly, the IA was later reduced on May 7, 1961 to reflect the adjustments made due to the changes in the Hot Mill proper and 54-inch Tandem Mill incentive plans. A two page chart designated Exhibit 3 is appended to this affidavit and sets forth the historical developments of the IA on electrical maintenance positions in the strip mill. (Additional data on the development of the IA is contained in Exhibit 4A attached to Company's answers to interrogatories filed December 8, 1966.)

Whenever adjustments are made in an original incentive plan, the new plan must again be tested against the representative test period and the IA adjusted. An over-simplified example might be a hypothetical situation in which it was discovered that instead of allocating 10 standard minutes to a roll change, such roll change should be assigned 15 standard minutes. Such an adjustment in the plan would increase the percent performance of the employees in that particular unit since it would credit the employees with 15 standard minutes instead of 10 standard minutes for each such

roll change. The resulting increased percent performance produces increased earnings for the employees who are working at the time such roll changes are made. However, when the new incentive plan is run through the representative test period, the earnings which the employees would have made during the test period under the new plan will be increased for those turns during which employees perform the roll changes. As a result, the gap between the test period earnings under the old plan and the test period earnings for the revised new plan is narrowed and the IA will be reduced accordingly. In short, since the IA is an add on designated to satisfy the test of the representative test period, it is adjusted downward when the incentive earnings are adjusted upward.

HISTORY OF DIRECT PLAN ADJUSTMENTS IN THE STRIP MILL

Following the establishment of the direct incentive plans referred to above, certain grievances were filed by employees in the strip mill complaining of alleged inequities in the mechanics of the direct plans. These grievances were processed by the Union through the contractual grievance procedure.

One such grievance was filed in relation to the incentive plan established in the 54-inch Tandem Mill. The grievance was originally filed on May 21, 1959 protesting the incentive plan installed by the Company in the 54-inch Tandem Mill on April 12, 1959. Numerous hearings and conferences at which the rights of the grievants were adequately and fairly

represented by the Union were held on this issue. As a result of discussions between the Company and the Union at a meeting held pursuant to the grievance procedure on May 1, 1961 several adjustments were made in the rates and standards applicable to the direct plan in the 54-inch Tandem Mill.

These adjustments of certain standards in the 54-inch Tandem Mill plan resulted in prospective adjustments in the plans of both the direct employees working in the 54-inch Tandem Mill, and the indirect employees, beginning on May 7, 1961. In addition, at a later date, the direct employees working in the 54-inch Tandem Mill were paid retroactive adjustments from April 12, 1959, the date that the plan was put into effect in the 54-inch Tandem Mill, to May 7, 1961, the date from which the adjustments made were effective prospectively.

At that time retroactive payment adjustments were not made to the indirect employees, since there were other outstanding grievances in other contributing direct units and the Company felt that it would be more efficient, expeditious and accurate to await the resolution of all outstanding grievances dealing with direct units prior to making any retroactive adjustment to the indirect employees.

On May 3, 1959, a new incentive plan was established in the Hot Mill proper. On June 12, 1959 a grievance was filed protesting alleged inequities in the plan. The Union processed the grievance through the various steps of the grievance procedure. As a result of discussions between the Company and the Union on

May 2, 1961, the Company revised certain portions of the incentive plan due to some of the alleged deficiencies in the incentive rate which had previously been pointed out by the Union at a step 4-1/2 meeting convened pursuant to Section 5(e) of the 1956 Agreement, held at the Lackawanna Plant on or about October 25, 1960. As was the case with the adjustments made in the 54-inch Tandem Mill plan, these adjustments resulted in increased standard minutes allotted to certain tasks performed by the employees working directly in the Hot Mill proper.

As a result the direct incentive plan governing the Hot Mill proper, and the indirect plan at issue in this lawsuit, were prospectively adjusted on May 7, 1961. However, retroactive payments were made only to the direct employees and no retroactive payments were made to the indirect employees based on the adjustments in the Hot Mill proper plan. Again the reasoning of the Company was that it would await settlement of all outstanding grievances on direct plans prior to making the extensive calculations necessary to compute the payments due the indirect employees.

As noted above, on April 10, 1960, the Company established a new incentive plan for the #2, 3 and 5 Skin Mills. Between the period beginning on or about May 14, 1960 and October 5, 1960, several grievances were filed protesting various alleged inequities in the newly established incentive plan in the Skin Mills. These grievances were processed by the Union through the various steps of the grievance procedure. As a result of some inequities pointed out in the new incentive plan by the Union at meetings held pursuant to the grievance procedure,

the Company made certain adjustments in the plan through June 10, 1962. Ultimately, an arbitrator's award dated August 7, 1963 finally disposed of all outstanding issues arising from the grievances. As was the case with other adjustments made in the direct plans, these adjustments were made prospectively from the date of the change, for both the direct employees concerned and the indirect employees. However, retroactive payments were only made to the direct employees, since there were still outstanding grievances affecting other direct units in the Strip Mill.

As noted above, on November 29, 1959 the Company established a new incentive plan in the Annealing Department. On January 6, 1960 a grievance was filed protesting alleged inequities in the new plan. This grievance was processed through the grievance procedure by the Union and on March 4, 1962 certain adjustments were made in the plan by the Company. These adjustments resulted in certain retroactive payments being made to the employees working in the Annealing Department and also prospective adjustments in their plan. Prospective adjustments were likewise made in the indirect employees' plan, effective June 10, 1962, to reflect the adjustments in the Annealing plan. Subsequent to these adjustments in the plan, additional grievances were filed by the Union protesting the plan as adjusted on March 4, 1962. These issues were finally resolved in the grievance procedure by the Company and the Union on February 15, 1966 based on the 1962 adjustments for which payments had been made.

Thereafter, the only outstanding grievances dealing with the direct plans which could conceivably affect the indirect employees' compensation were those dealing with the Continuous Picklers.

Affidavit of H. D. Evenden in Support of Summary Judgment.

As noted above, on February 28, 1960 the Company established a new incentive plan in the Continuous Picklers department. On April 9, 1960 several grievances were filed protesting certain inequities in the new plan. These grievances were processed through the grievance procedure by the Union and on December 16, 1966 the grievances were finally settled by the parties based upon an adjustment formula of $.025 per hour to be paid to appropriate direct employees, and $.008 per hour to certain auxiliary employees, for hours worked during the period February 28, 1960 through October 24, 1964. It should be noted, however, that, unlike the other four direct plans, this settlement did not result in any adjustment to the direct plan itself. It was purely a money settlement, with no retroactive or prospective change in the Continuous Picklers' plan and consequently had no effect on the indirect plan.

THE INDIRECT PLAN GRIEVANCES

As noted above, on or about April 17, 1960, the Company established indirect incentive plans covering the mechanical maintenance and electrical maintenance jobs. On June 1, 1960, a grievance was filed protesting the electrical maintenance incentive plan. Among the claims made in this grievance were, (1) that the plan should be direct, rather than indirect, (2) that the wrong representative test period had been used, and (3) that the plan itself was unreasonable and unfair. This grievance was processed by the Union through the steps of the grievance procedure provided for in the parties' collective bargaining agreement, and an arbitration hearing on the grievance was held on November 27, 1962 in conjunction with a similar grievance filed in connection with the mechanical maintenance employees' incentive plan.

Affidavit of H. D. Evenden in Support of Summary Judgment.

On or about June 24, 1960, a grievance was filed protesting certain inequities in the mechanical maintenance incentive plan. The same three claims were made as were made in the grievance referred to in the previous paragraph, namely that (1) the plan should be a direct plan, (2) that the representative test period was improper, and (3) that the plan itself was unreasonable and unfair. This grievance was processed through the steps of the grievance procedure as provided in the collective bargaining agreement between the parties, and on November 27, 1962, an arbitration hearing was held on this plan. From this point on the grievances dealing with the electrical maintenance plan and the mechanical maintenance plan were consolidated and treated together.

At the aforementioned arbitration hearing on November 27, 1962 the Union withdrew from both grievances the issue that the plans should be designated as direct. The parties then agreed to remand the remaining issues in these grievances to the third step of the grievance procedure, pending the disposition of the cases involving the direct units which contributed to the electrical and mechanical incentive plans.

After additional processing at the third step of the grievance procedure, at which time full discussions were had on the issues involved, the grievances as consolidated were then processed through the fourth step of the grievance procedure and were finally taken to arbitration by the Union on March 12, 1964. On November 18, 1964 an arbitration hearing was held before the impartial umpire designated by the parties pursuant to their collective bargaining agreement, and on July 12, 1965 the umpire

rendered his award. A copy of the award of the impartial arbitrator is designated Decision No. 1138. (Exhibit D, attached to the affidavit of William J. Theis.)

In the arbitration award, the umpire dismissed the grievances, holding that the claims raised by the Union in the grievances involved no claim of contractual violation on which the umpire might rule, namely, (1) the claim that the incentives were too complex, (2) the claim that the incentives for these employees should be based on actual work (that is, that they should be direct plans), and, (3) the claim that the indirect employees' earnings had fallen below those in the test period. The umpire also rejected Union claims that the employees should be paid as direct employees and that the test period was not representative.

As part of the same award, the umpire found that the indirect employees' claims relating to their earnings derived from the direct plans had already been settled on the basis that the Company would apply any adjustments to the direct plans to the indirect plans and pay any amounts retroactively that might be due the indirect employees.

In 1966, when it became apparent that the remaining issues in the grievances involving the Continuous Picklers' incentive plan would not affect the electrical and mechanical incentive plans, the Company undertook to compute the amount of retroactive pay, if any, that was due the indirect employees by reason of the adjustments in the direct plans.

It was at this point that the Company discovered that certain production records were missing along with the records containing adjusted percent performance figures which had been used in calculating the retroactive payments paid to the direct workers. Without these records, the Company would be unable to make a precise computation of the retroactive payments, if any, due to the indirect workers.

In response to an inquiry made on or about May 11, 1966, deponent advised Irving Trost, a grievance representative of the Union, that the Company was preparing a computation of the retroactive payments which it intended to tender to the indirect employees to satisfy its obligations, if any, under the arbitrator's award No. 1138. In the affidavit of Rae Williamson, the facts are set forth as to the missing records and the alternative method of computation employed by the Company to arrive at the schedule of retroactive payments, expressed in cents per hour, for each job involved. The tendered payments were computed using the alternative method set forth in the Williamson affidavit. It was not then conceded by the Company that any such amount was actually owed to the employees and if the records were available it might well be demonstrated that no actual payment is due to the electrical and mechanical maintenance employees. However, in order to resolve the question, the foregoing formula for payments has been tendered and will be paid by the Company, providing it is approved in the grievance procedure and results in a discharge of the Company's obligation to all of the employees within the class.

Thus the grievance procedure and arbitration have resolved all of the issues raised by the plaintiffs in this action,

with the possible exception of the alternative method of computing the retroactive payments tendered. In any event, the appropriate remedy for resolving the latter issue is within the grievance procedure and not in a court action.

On or about June 16, 1966 the retroactive payment tender was presented to the electrical and mechanical maintenance employees at meetings conducted by the Union and the employees voted to reject the tender and instituted this action against the Company and the Union charging that the Union had failed in its representation of the indirect employees.

The Company takes the position that:

1. The plaintiffs' claims have been finally determined and resolved in the grievance procedure and in arbitration. Since there is no proof of failure of fair representation by the Union, the action against the Union and the Company should be dismissed.

2. The question as to whether any retroactive payments are due to the plaintiffs as the result of the adjustments made in the direct contributing incentive payment plans is a matter to be resolved in the grievance procedure and this Court should not assume jurisdiction of it.

3. The Company is ready and has been willing to expedite the disposition of the issue regarding the retroactive payments through the contractual grievance procedure designed for the resolution of such issue.

Affidavit of H. D. Evenden in Support of Summary Judgment.

The Company requests that the action be dismissed and summary judgment be granted in favor of both defendants.

H. D. Evenden

Sworn to before me this
14th day of November 1972.

Thomas P. Lesswing

THOMAS P. LESSWING
Notary Public, State of New York
Qualified in Erie County
My Commission Expires March 30, 19 73

Affidavit of Donald W. Cummings in Support of Motions for Summary Judgment.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

LAWRENCE RALPH and DIVERS OTHERS, Civil Action No. 11,892

Plaintiffs,

-vs-.

THE BETHLEHEM STEEL CORPORATION and THE UNITED STEELWORKERS OF AMERICA,

AFFIDAVIT OF DONALD W. CUMMINGS

Defendants.

STATE OF NEW YORK)
) ss.
COUNTY OF ERIE)

DONALD W.CUMMINGS, being duly sworn deposes and says:

That he holds the position of Assistant to the Management's Representative in the Lackawanna Plant of the Bethlehem Steel Corporation (hereinafter called "Company") in which position he is generally concerned with the administration of the industrial relations policies, representing the Company from time to time in the grievances out of which this action arose and more particularly grievances No. B-3139 and B-3141 heretofore filed by the electrical and mechanical maintenance workers in the Strip Mill.

It is the practice of the Company to maintain records of the processing of all grievances and to retain a file on each such grievance. At the third and fourth step levels of the grievance procedure the Company is required to record the minutes of the meeting in which there is set forth the substance of the claims made by the Union and the Company and the determination reached. Following the meeting the minutes are reduced to writing and presented to the Union as a record of the action taken at the meeting in question. The minutes of the meetings are thereafter retained as a part of the

grievance file and as records of the Company kept in the usual course of its business.

Deponent has reviewed the Company's records pertaining to grievances B-3139 and B-3141 and has prepared a chronology of the pertinent dates in the course of the processing of each grievance. The chronologies are attached hereto and designated Bethlehem Exhibits 7 and 8, respectively.

Among the meetings held in the course of the processing of these grievances were a Step No. 3 Meeting held on May 1, 1961, and a Step No. 4 Meeting held on October 1, 1963. Attached hereto and marked Bethlehem Exhibit 5 is a true copy of the minutes of the Step No. 3 Meeting, in Grievances B-3139 and B-3141 held on May 1, 1961. Also attached hereto and designated Bethlehem Exhibit 6 is a true copy of the minutes of the Step No. 4 Meeting in Grievances B-3139 and B-3141 held on October 1, 1963.

Donald W. Cummings

Subscribed and sworn to before me
this 3rd day of April, 1973.

_____

Exhibit 5 Attached to Affidavit of Donald W. Cummings.

LOCAL NO. 2604 - GRIEVANCE NO. B-3139

Step 3 Meeting 5-1-61
Strip Mill
Mechanical

"The Union disagrees with the new rate instituted by the company on the following positions (see attached sheet). The Union maintains that the above positions are direct workers instead of indirect and should be paid as such; also the Union disagrees with the test representative period that the company has used for the method of payment. The Union requests Management to pay the above positions retroactive pay. The Union also contends that the rates are unreasonable and unfair. This request is made pursuant to Article V, section 2(c), paragraph 3 of the Agreement."

This grievance was first discussed at 3rd Step Meeting No. 595 and held in abeyance pending an investigation of the issues raised by the Union.

Management presented the Union with the following earnings' figures:

1. The earnings for the Millwright position since the institution of this rate are as follows:

Week Ending	Hourly Earnings	Week Ending	Hourly Earnings
4-23-60	3.226	10-22-60	3.075
4-30	3.204	10-29	3.124
5-7	3.259	11-5	3.152
5-14	3.234	11-12	3.034
5-21	3.096	11-19	3.094
5-28	3.147	11-26	3.110
6-4	3.092		
6-11	3.135	Straight Average to	
6-18	3.080	11-30-60*	3.135
6-25	3.139		
7-2	3.177	12-3-60*	3.246
7-9	3.078	12-10	3.142
7-16	3.130	12-17	3.225
7-23	3.115	12-24	3.222
7-30	3.109	12-31	3.237
8-6	3.049	1-7-61	3.232
8-13	3.149	1-14	3.256
8-20	3.127	1-21	3.268
8-27	3.144	1-28	3.226
9-3	3.160	2-4	3.243
9-10	3.192	2-11	3.205
9-17	3.232	2-18	3.235
9-24	3.152	2-25	3.361
10-1	3.114	3-4	3.278
10-8	3.089	3-11	3.137
10-15	3.103	3-18	3.223

Exhibit 5 Attached to Affidavit of Donald W. Cummings.

Week Ending	Hourly Earnings
3-25	3.250
4-1	3.257
4-8	3.301
4-15	3.313
Straight Average 12-1-60 to 4-15-61	3.243

* Indicates split week because of Gen. Increase. The % perf. for the entire week was used in calculating the earnings for both parts of the split week. (Per Payroll Dept.)

2. Test Period Average earnings for the Millwright's position was $3.261. The Test Period Average earnings adjusted to the 12-1-60 increase is $3.372.

3. The average quarterly earnings adjusted to the 7-1-58 Wage Scale for the twelve quarters immediately preceding the institution of this rate are as follows:

QUARTER	ADJUSTED TO 7-1-58
1st, 1957	3.394
2nd, 1957	3.238
3rd, 1957	3.199
4th, 1957	3.226
1st, 1958	3.134
2nd, 1958	3.173
3rd, 1958	3.158
4th, 1958	3.202
1st, 1959	3.307
2nd, 1959	3.298
4th, 1959	3.230
1st, 1960	3.286
Average	3.237

Issue No. 1

The Union contends that the Representative Test Period is not

Exhibit 5 Attached to Affidavit of Donald W. Cummings.

truly representative. The test period included the two weeks before the 1959 strike and the eleven weeks immediately following resumption of operations after the strike. The Union takes issue with the weeks used as the test period, which occurred after the strike was over, because it was difficult to get the equipment operating again after having been idle for such a long period of time.

Management stated that the $3.237 average for the twelve quarters immediately preceding the institution of this rate (as shown in Item 3 above), compares very closely with the test period average earnings of $3.261. Therefore, Management stated that the test period is proper.

Issue No. 2

The Union requests that the employees of the Strip Mill Mechanical Department be paid as direct workers instead of as indirect workers. The work performed by the Strip Mill Mechanical Maintenance employees bears directly on whether a given unit continues in operation or is expeditiously put back into operation after breakdown.

It is Management's position that Mechanical Maintenance work is not work of the character which should properly be classified as direct work. Management stated that the designation of Strip Mill Mechanical Department employees as premium workers is proper, therefore, they will continue to be paid as such.

Issue No. 3

The Union contends, and it is virtually impossible for the employees of the Strip Mill Mechanical Department to calculate their pay. An employee should be able to easily calculate the amount of his pay without resorting to a figure provided by Management.

Management stated that the incentive rates on all the contributing

units are by nature more complex because it was desired to base these rates on a measurement of the performance by each contributing unit. This, coupled with the fact that the incentive rate for the Mechanical Department is calculated from many contributing units (as it has been done in the past), served to make the calculation of earnings under this rate some what complicated. However, this rate is no more complicated than the rate from which the Strip Mill Mechanical Maintenance employees were paid on in the past.

Issue No. 4

The Union contends that the Test Period Average earnings have never been attained by the employees of the Strip Mill Mechanical Maintenance Department since the institution of this rate. The Union can well understand that since the earnings paid to the contributing units are, in most cases under the Test Period Average earnings, that this is necessarily going to be reflected in the earnings of the employees of the Strip Mill Mechanical Maintenance Department. The Union is, therefore, suggesting that the employees of the Strip Mill Mechanical Maintenance Department be paid average earnings until the incentive rates on the contributing units can be straightened out.

Management stated that it is true that many of the rates on the contributing units have not produced earnings in line with the earnings produced during the Representative Test Period. However, this is not one of the tests which Management is obligated to meet in establishing an incentive rate under the May 25 agreement. However, it was pointed out that any adjustments made in the rates to units which are serviced by

Exhibit 5 Attached to Affidavit of Donald W. Cummings.

Mechanical and Electrical Department employees will be reflected in the incentive rate for the Mechanical Department employees.

Issue No. 5

The Union requested that the incentive rates for the Mechanical Department be based on the actual work done by Mechanical Department employees and not on the work performed by operating department employees. Mechanical Department employees worked hardest when the operating department is not producing.

Management stated that the Union is without jurisdiction to dictate the basis upon which an incentive rate for a given group of employees shall be placed. Management feels that the rate for the Mechanical Department employees meets the required tests of the May 25 Agreement, therefore, the basis for the establishment of incentive earnings will not be changed for Mechanical Department employees.

The Union stated that the main concern of the employees is that they have suffered a loss in earnings and that Management is obligated under the May 25 Agreement to preclude such loss of earnings.

Management stated that this rate properly meets the requirements under the May 25 Agreement, therefore, this grievance is denied.

Exhibit 5 Attached to Affidavit of
Donald W. Cummings.

Step 3 Meeting 606
5-1-61

LOCAL NO. 2604 - GRIEVANCE NO. B-3141

Strip Mill
Electrical

"The Union disagrees with the new rate and units instituted by the company on the following positions - (Motor Room Operator, Motor Room Attendant "A", Motor Room Attendant "B", Motor Room Attendant "C", Motor Room Attendant Helper, Crane Millwirght, Crane Repairman "A", Crane Repairman "B", Crane Repairman "C", Crane Repairman Helper, Crane Oiler, Motor Inspector, Electrical Repairman "A", Electrical Repairman "B", Electrical Repairman "C", Electrical Helper, Electircal Oiler. The Union maintains that the above positions should be direct workers instead of indirect and should be paid as such; and also disagrees with the test representative period that the company has used for the method of payment. The Union requests Management to pay the above positions retroactive pay. The Union also contends that the rates are unreasonable and unfair. This request is made pursuant to Art. V, section 2(c), Para. 3 of the Agreement."

The initial 3rd Step discussion of this grievance took place at 3rd Step Meeting No. 599. The 3rd Step record for Meeting No. 599 established that this grievance would be held in abeyance pending an investigation of the issues raised by the Union.

Management submitted the following earnings' figure:

1. The average earnings for the Crane Millwright position since the institution of this rate (4-17-60) are as follows:

Exhibit 5 Attached to Affidavit of Donald W. Cummings.

Week Ending	Hourly Earnings
4-23-60	3.226
4-30	3.204
5-7	3.259
5-14	3.234
5-21	3.096
5-28	3.147
6-4	3.092
6-11	3.135
6-18	3.080
6-25	3.139
7-2	3.177
7-9	3.078
7-16	3.130
7-23	3.115
7-30	3.109
8-6	3.049
8-13	3.149
8-20	3.127
8-27	3.144
9-3	3.160
9-10	3.192
9-17	3.232
9-24	3.152
10-1	3.114
10-8	3.089
10-15	3.103
10-22	3.075
10-29	3.124
11-5	3.152
11-12	3.034
11-19	3.094
11-26	3.110
11-30*	3.139
Straight Average to 11-30-60	3.135

Week Ending	Hourly Earnings
12-3-60*	3.246
12-10	3.142
12-17	3.225
12-24	3.222
12-31	3.237
1-7-61	3.232
1-14	3.256
1-21	3.268 ✓
1-28	3.226
2-4	3.243
2-11	3.205
2-18	3.235
2-25	3.361 ✓
3-4	3.278 ✓
3-11	3.137
3-18	3.223
3-25	3.250
4-1	3.257
4-8	3.301 ✓
4-15	3.313 ✓
Straight Average 12-1-60 to 4-15-61	3.243

* Indicates split week because of Gen. Increase. The % perf. for the entire week was used in calculating the earnings for both parts of the split week. (Per Payroll Dept.)

2. The Test Period Average earnings figure for the Crane Millwright position is $31261, adjusted to the 7-1-58 Wage Scale. The Test Period Average earnings figure adjusted to the 12-1-60 increase is $3.372.

3. The average hourly earnings adjusted to the 7-1-58 Wage Scale for the twelve full quarters immediately preceding the institution of this

Exhibit 5 Attached to Affidavit of Donald W. Cummings.

rate are as follows:

QUARTER	ADJUSTED TO 7-1-58
1st, 1957	3.293
2nd, 1957	3.239
3rd, 1957	3.198
4th, 1957	3.225
1st, 1958	3.133
2nd, 1958	3.168
3rd, 1958	3.143
4th, 1958	3.202
1st, 1959	3.036
2nd, 1959	3.299
4th, 1959	3.230
1st, 1960	3.287
Average	3.235

3.306

Issue No. 1

The Union maintains that the test period chosen by Management is not proper. The two weeks immediately preceding the 1959 strike and the nine weeks after the resumption of operations after the strike are not considered by the Union to be a normal production period.

Management stated that the Test Period Average earnings' figure ($3.261) compares closely with the overall average earnings' figure ($3.235) for the twelve quarters immediately preceding the institution of this rate as outlined in Item 3 above. Therefore, Management believes that the test period chosen is, in fact, representative.

Issue No. 2

The Union stated that the calculations of the earnings under the new rate for the Electrical Maintenance Department are too complicated. The Union feels that an employee should be able to easily calculate what his incentive earnings are for a given period. Errors can be made by Management in the calculation of the incentive earnings for the Electircal

Exhibit 5 Attached to Affidavit of Donald W. Cummings.

Department employees, which would be impossible to detect by the employees paid from this plan.

Management stated that the calculations involved in the incentive rate for the Electrical Maintenance employees at the Strip Mill is no more complicated than the plan it replaced. The more fact that the Strip Mill Electrical Department employees are paid on the performances of various units would preclude a simple method of Strip Mill Electrical Department incentive calculation. Management has no plan to revise the method of calculation of the incentive earnings for the Strip Mill Electrical Department employees. However, Management is presently exploring the possibilities of providing a greater amount of information from which the incentive earnings for the Strip Mill Electrical Department employees can be calculated.

Issue No. 3

The Union contends that the Strip Mill Electrical Maintenance employees should be considered full participants in incentive earnings rather than being considered as indirect workers. The performance of Strip Mill Electrical Maintenance duties are directly tied to the continued operation of the producing units and the prompt return to operation of producing units which have had electrical failures.

Management stated that since the work performed by the Strip Mill Electrical Department employees is not directly involved with the production on the units which contribute to the incentive earnings of the Strip Mill Electrical Department employees, such employees are properly considered premium workers.

Issue No. 4

The Union challenges the weight given to each of the contributing

units which Management has established in the application of the incentive rate for the Strip Mill Electrical Department employees. The Union regards the contribution of the Hot Mill Proper (9/20ths) as excessive and completely out of line with the amount of electrical maintenance required on the Hot Mill Proper. Due to the fact that the contribution of the Hot Mill Proper has such a heavy wieght, the incentive rate paid to the Strip Mill Electrical Department employees is too closely tied with the potential large variations in Hot Mill Proper percent performance. The Union cited the week ending November 12, 1960, as a week when the Hot Mill was down and the employees in the Strip Mill Electrical Department had their earnings adversely affected due to the fact that the Hot Mill Proper was down. The Union further challenges Management's establishment of the Pickler's contribution (3/20ths) as improper, especially in view of the fact that only two Pickle Lines have been used since July of 1960. The Union contends that the relative contributions of the producing units at the Strip Mill, as described in the Rate Brochure for Electrical Maintenance employees, are in general not proper.

Management stated that the development of the weights allocated to each of the Strip Mill producing units is based on the number of mechanical and electrical manhours spent in the maintenance of these units in the year 1959. Management feels that this is a sound basis for the establishment of the incentive rate applicable to the Strip Mill Electrical Department employees, and since this rate otherwise fulfills the test period obligations of Management under the May 25 Agreement, Management feels that the Union's objection on this point is without foundation.

Exhibit 5 Attached to Affidavit of Donald W. Cummings.

Issue No. 5

The Union stated that at an Arbitration hearing on 2-11-59, Management provided the Union with an average earnings' figure for the Motor Inspector position in 1956 of $3.46. The Union stated that with the increases which have accrued since 1956, this figure would be around $3.76. The $3.76 figure is quite far removed for the Test Period Average earnings figure of $3.261 and also the Management's quarterly average earnings figure of $3.235.

Management explained that since the alleged $3.46 earnings figure was provided to the Union on 2-11-59, that it was, more than likely, revised to reflect the increases attendant to the 7-1-58 Wage Scale. The average quarterly earnings for the year 1956 are as follows:

Quarter	Avg. Earn. Per Hour (291)	Revised 7-1-58
1st	$3.045	$3.414
2nd	3.043	3.412
3rd	Strike	-
4th	3.208	3.442

Issue No. 6

The Union stated that the employees of the Strip Mill Electrical Maintenance Department are doing as much work now as they did in the past, but are not realizing earnings equal to the Test Period Average earnings. The Union stated that since the May 25 incentive rates are supposedly set on maximum equipment utilization, Management should set a rate for the employees of the Strip Mill Electrical Department on the maximum utilization of the tools they use. The Union maintains that the rate set for the employees of the Strip Mill Mechanical Electrical Department is too tight, and that even with the improved business picture of late, the earnings have still not reached the Test Period Average earnings.

Exhibit 5 Attached to Affidavit of Donald W. Cummings.

Management stated that it would be impractical and virtually impossible to apply our incentive rate to the Strip Mill Electrical Department maintenance employees as requested by the Union. Management stated that the reason for the depressed earnings picture for the employees of the Strip Mill Electrical Department, is due to the fact that the percent performance of the contributing units has not come up to the level experienced during the test period. Management stated that there is no obligation under the May 25 Agreement to guarantee any given level of earnings. The obligation that Management does have is that for the same type of circumstances, the earnings will be at least equal to the Test Period Average earnings. Management stated that there is no way of guaranteeing a given type or level of business activity.

The Union stated that as in most other complaints on May 25 incentive rates, the prime concern is that the earnings for the employees in the Strip Mill Electrical Department are down. The Union cannot specifically point out what is driving the earnings down, but the Union is interested in having Management do whatever is necessary to raise the earnings to at least the level experienced during the test period.

Management stated that the May 25 incentive rate for the Strip Mill Electrical Department is proper and has met all the tests of the May 25 Agreement. Therefore, this grievance is denied.

Denied

Exhibit 6 Attached to Affidavit of Donald W. Cummings.

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L.U. 2604

Grievances Nos. B-3139 and B-3141

In Grievance No. B-3139, a group of employees in the Strip Mill Mechanical Department states:

> "The Union disagrees with the new rate instituted by the company on the following positions (see attached sheet) The Union maintains that the above positions are direct workers instead of indirect and should be paid as such; also the Union disagrees with the test representative period that the company has used for the method of payment. The Union requests Management to pay the above positions retroactive pay. The Union also contends that the rates are unreasonable and unfair. This request is made pursuant to Article V, section 2(c), paragraph 3 of the Agreement."

In Grievance No. B-3141, a group of employees in the Strip Mill Electrical Department states:

> "The Union disagrees with the new rate instituted by the company on the following positions--(Motor Room Operator, Motor Room Attendant 'A' Motor Room Attendant 'B', Motor Room Attendant 'C', Motor Room Attendant Helper, Crane Millwright, Crane Repairman 'A', Crane Repairman 'B', Crane Repairman 'C', Crane Repairman Helper, Crane Oiler, Motor Inspector, Electrical Repairman 'A', Electrical Repairman 'B', Electrical Repairman 'C', Electrical Helper, Electrical Oiler. The Union maintains that the above positions should be direct workers instead of indirect and should be paid as such; and also disagrees with the test representative period that the company has used for the method of payment. The Union requests Management to pay the above positions retroactive pay. The Union also contends that the rates are unreasonable and unfair. This request is made pursuant to Art. V, section 2(c), Para. 3 of the Agreement."

Exhibit 6 Attached to Affidavit of Donald W. Cummings.

L.U. 2604
B-3139 and B-3141

Statement of the Union's Position

With Reference to Grievance No. B-3139

Union Representative's Understanding of the Facts:

"The facts in the above case are as follows: This case was appealed to Arbitration with pre-hearing statements filed, when it was agreed by the parties on the 27th of November 1962 remand this case to 3rd Step because at that time there were certain rates that were not settled. Some of these rates were contributing factors to the incentive rates of the Mechanical Department, and it was felt by the parties that this grievance should wait until those rates were eventually settled. Now that those rates have been settled, the Union is again appealing this grievance to 4th Step for either a possible settlement or eventual Arbitration."

Remedy Sought:

"That this rate be adjusted upward so that it will be in equitable relationship to the rate it replaced."

Article and Section Violated:

"The Union claims that this is a violation of Article V, section 2-C, paragraph 3 of the Agreement."

With Reference to Grievance No. B-3141

Union Representative's Understanding of the Facts:

"The facts in the above case are as follows: This case was appealed to Arbitration with pre-hearing statements filed, when it was agreed by the parties on the 27th of November 1962 remand this case to 3rd Step, because at that time there were certain rates that were not settled. Some of these rates were contributing factors to the incentive rates of the Electrical Department, and it was felt by the parties that this grievance should wait until those rates were eventually settled. Now that those rates have been settled, the Union is again appealing this grievance to 4th Step for either a possible settlement or eventual Arbitration."

Exhibit 6 Attached to Affidavit of Donald W. Cummings.

Remedy Sought:

"That this rate be adjusted upward so that it will be in equitable relationship to the rate it replaced."

Article and Section Violated:

"The Union claims that this is a violation of Article V, section 2-C, paragraph 3 of the Agreement."

The Company's contentions were, in substance, as follows:

The grievances were filed in June of 1960 and were processed through the grievance procedure, appealed to arbitration and set for a hearing before an Arbitrator on November 27, 1962. The grievances were remanded to Step No. 3 on the following basis, as stated in the record of the November 27, 1962 hearing: "Mr. Reilly: With respect to Grievances Nos. B-3139 and B-3141, the first of which was filed by Mechanical Maintenance employees and the second grievance which was filed by Electrical Maintenance employees, the parties have reached the following understanding: The Union has agreed to withdraw the issue that Mechanical and Electrical Maintenance jobs be designated as direct and the parties have agreed to remand these two grievances to Step No. 3 of the grievance procedure, pending the disposition of rate cases involving the units which contribute to the Electrical and Mechanical Incentive Plan.

Is that a fair statement of the understanding? Mr. Jardin: Yes."

In other words the grievances were simply to be held in Step No. 3 until such time as the incentive plans which contribute to

Exhibit 6 Attached to Affidavit of Donald W. Cummings.

L.U. 2604
#B-3139 and B-3141
Company's contentions, cont.

the incentive plans concerned in these two grievances were finally settled either by the parties or through arbitration. The Union apparently got the mistaken impression that Mr. Reilly intended to discuss these grievances with its representatives in Step No. 3. That this is contrary to fact becomes quite evident when the excerpt from the November 27, 1962, Arbitration Hearing transcript is read. In the Step No. 3 Meeting held on August 9, 1963, the Union tried to make contentions in addition to those that were already part of the record. Management properly took the position that this was improper because the sole purpose was to hold the grievances in abeyance in Step No. 3 until the incentive plans on the units which contribute to the incentive plans concerned in these grievances were disposed of. All the incentive plans applicable to the units which contribute to the incentive plans concerned in the instant grievances have been settled, except for those covering the four Stack Open Coil Annealing Furnaces and the Pickler Line.

However, inasmuch as the Union has reactivated these grievances, there is not anything for the Company to do except to reassert its position as set forth in its pre-hearing brief, dated December 21, 1961. Although the Union improperly introduced new arguments in the Step No. 3 Meeting held on August 9, 1963, Management answered them without prejudice to its position that such contentions were improperly made. There is not any need to reiterate Management's answers to the Union's new contentions here.

Disposition

The grievance is denied.

Exhibit 7 Attached to Affidavit of Donald W. Cummings.

CHRONOLOGY OF GRIEVANCE PROCEDURE

D-3139

		Disposition	Exhibit
Presented to Foreman	6-24-60		
Answered by Foreman	6-30-60	Denied	
Appealed to Step No. 2	6-29-60		
Answered by Superintendent	7-9-60	Denied	
Appealed to Step No. 3	7-12-60		
Step No. 3 Meeting Held	11-28-60	Held	Ex.A-Trost afft.
Step No. 3 Meeting Held	5-1-61	Denied	Ex.5-Bethlehem
Appealed to Step No. 4	6-13-61		
Step No. 4 Meeting Held	7-31-61	Denied	
Appealed to Arbitration	9-8-61	Denied	
Arbitration Hearing Held	11-27-62	Remanded to Step No. 3	Ex.C-Trost afft.
Step No. 3 Meeting Held	8-9-63	Denied	
Appealed to Step No. 4	9-3-63		
Step No. 4 Meeting Held	10-1-63	Denied	Ex.6-Bethlehem
Appealed to Arbitration	3-12-64		
Joint Incentive Committee Meeting	6-2-64		Ex.C-Theis afft.
Arbitration Hearing Held	6-24-64	Held	
Arbitration Hearing Held	11-18-64	Dismissed - Decision No. 1138	Ex.D-Theis afft.

Exhibit 8 Attached to Affidavit of Donald W. Cummings.

CHRONOLOGY OF GRIEVANCE PROCEDURE

B-3141

		Disposition	Exhibit
Presented to Foreman	6-1-60		
Answered by Foreman	6-13-60	Denied	
Appealed to Step No. 2	6-19-60		
Answered by Superintendent	7-11-60	Denied	
Appealed to Step No. 3	7-15-60		
Step No. 3 Meeting Held	2-21-61	Held	Ex.B-Trost afft.
Step No. 3 Meeting Held	5-1-61	Denied	Ex.5-Bethlehem
Appealed to Step No. 4	6-13-61		
Step No. 4 Meeting Held	7-31-61	Denied	
Appealed to Arbitration	9-8-61		
Arbitration Hearing Held	11-27-62	Remanded to Step No. 3	Ex.C-Trost afft.
Step No. 3 Meeting Held	8-9-63	Denied	
Appealed to Step No. 4	9-3-63		
Step No. 4 Meeting Held	10-1-63	Denied	Ex.6-Bethlehem
Appealed to Arbitration	3-12-64		
Joint Incentive Committee	6-2-64		Ex.C-Theis afft.
Arbitration Hearing Held	6-24-64	Held	
Arbitration Hearing Held	11-18-64	Dismissed - Decision No. 1138	Ex.D-Theis afft.

Bethlehem Exhibit 8

Affidavit of Rae Williamson in Support of Summary Judgment.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

LAWRENCE RALPH and DIVERS OTHERS,

Plaintiffs,

vs.

THE BETHLEHEM STEEL CORPORATION and
THE UNITED STEELWORKERS OF AMERICA,

Defendants.

Civil Action No. 11,900

AFFIDAVIT IN SUPPORT OF SUMMARY JUDGMENT

STATE OF NEW YORK)
) ss:
COUNTY OF ERIE)

RAE WILLIAMSON, being duly sworn, deposes and says:

That he holds the position of assistant plant industrial engineer with the Bethlehem Steel Corporation (hereinafter called "Company") and in that position is generally responsible for administration of hourly incentive plans at the Company's Lackawanna, New York, plant.

That as assistant plant industrial engineer, he is generally familiar with the institution and operation of incentive plans in the strip mill at the Company's Lackawanna, New York, plant and makes the affidavit herein based on his knowledge of the proceedings and on Company records and documents reviewed by him.

That he has read the affidavit prepared and executed by Mr. H. D. Evenden, in which Mr. Evenden described the background and establishment of direct and indirect incentive plans in the strip mill at the Lackawanna, New York, plant and that the chronological account of the development of these plans as stated by Mr. Evenden is correct and accurate to the best of his knowledge.

In the direct plans, compensation is paid on an incentive basis whereby an employee begins to earn incentive earnings above his Standard Hourly Wage Rate (SHWR) when his output exceeds 74% of the unit's maximum possible output under optimum conditions. In calculating this incentive the device of "standard time" is used.

Affidavit of Rae Williamson in Support of Summary Judgment.

A standard time is computed for each basic task performed by direct employees as follows: First of all, normally by time study, the number of minutes it actually takes an employee working at maximum output to perform a task is developed. This figure is called "actual time". To the actual time, a rest allowance is usually added, yielding what is termed "base time". At that point "delay studies" are made to take into account such factors as meal period, personal time, equipment adjustments, breakdown and so forth. The result is a "delay allowance". This delay allowance is added to the base time to arrive at the "maximum production time" for a given task, i.e., the minimum time it would take a fully qualified employee to perform a task under ideal conditions, including allowances for rest and delay.

For example, assume that it was determined that at maximum output a given task of sawing off a piece of steel took 60 minutes to perform (actual time). To the actual time a rest allowance of 10% might be added, yielding a base time of 66 minutes. Then a delay allowance is added to the base time, for example, 12% or about 8 minutes, yielding a maximum production time for the given task of 74 minutes.

The maximum production time is then divided by the contractual percentage set by the parties' agreement to arrive at the final standard expressed as standard time. If this percentage were 74%, the result in the foregoing example would be a standard time of 100 minutes (74 minutes ÷ 74%).

Records are also kept of the actual clock minutes worked during the turn. The total actual minutes for a turn (480 minutes on an 8 hour turn) is then compared to the total standard minutes assigned to all the tasks performed on the same turn.

The percentage by which the standard minutes exceed the actual clock minutes then determines the incentive pay. The percentage which reflects the relationship of actual output to 100% (74% of maximum output) is called "percent performance".

It is often erroneously assumed that the level of incentive earnings is determined solely by the amount of steel produced. However, under these incentive plans based on standard minutes, quantity of production is only one factor affecting the computation, and is by no means the sole determinant of incentive earnings levels.

Thus, continuing our example, if an employee during a given turn sawed off five pieces of steel and had to change a worn saw blade twice, for which blade change a standard time of 14 minutes per change had been developed, he would have accumulated 528 standard minutes during the turn [(100 x 5) + (14 x 2)]. Dividing 528 by 480 actual minutes worked would result in an incentive gain of 10% and a percent performance of 110%.

Indirect employees are paid an incentive rate that represents 67% of the weighted average of the percent performance above 100% of all the units contributing to the indirect plan. Thus, if the weighted average of the direct units' percent performance is 110%, the indirect employees would then be entitled

to 67% of the 10%, or 6.7%, yielding an indirect percent performance of 106.7%.

In the affidavit of H. D. Evenden there is set forth the history of the grievances filed in relation to the direct incentive plans in the strip mill and adjustments made in the direct incentive plans. As these adjustments were made to the direct workers' incentive plans, the indirect plans of the electrical and mechanical maintenance employees were revised prospectively and payments were made currently as set forth in Mr. Evenden's affidavit. It was decided that the amount of retroactive payments due the indirect workers, if any, would not be computed until all related outstanding grievances involving the direct employees had been resolved.

In a consideration of the impact of changes in incentive plans for direct workers on the benefits to indirect workers, there are three important points which should be borne in mind. These are the so-called "Incentive Adjustment" (IA), the "100% floor" and the weight of the direct plan contribution to the indirect plan.

THE INCENTIVE ADJUSTMENT

The IA is basic to an understanding of the operation of the indirect incentive plans, and the effect, if any, that adjustments in the standards of the direct component plans have

on the earnings of employees working under the indirect plans.

IA stems from Section 5(b) of the Supplemental Agreement dated May 25, 1956. In that agreement the parties agreed that any new incentive plan established in accordance with the 1956 Supplemental Agreement would:

> "[M]eet the requirement that, over a past representative test period, the average hourly earnings of all the Employees assigned to a job under such new plan would not have been less under such new plan than the average hourly earnings received by all the Employees assigned to that job during such period under the incentive plan which it replaced."

Section 5(d) of the same Supplemental Agreement defines the past representative test period:

> "The term, 'past representative test period' means, in the absence of special circumstances, the period of three months next preceding the date on which an existing incentive plan shall be replaced by a new incentive plan."

Because of the language just quoted, whenever a new incentive plan is established under the 1956 Supplemental Agreement, the new plan is tested against a test period of 13 weeks, by comparing the average hourly earnings each job (position) made under the replaced plan (the old plan) with the average hourly earnings each job would have made under the new plan during the same period of time. If the earnings under the new plan are less than the earnings any job made under the old plan during the same test period, the difference between the two is made up in the form of an "add on", the IA.

For example, with the indirect plan in question, during the test period a Millwright earned $3.261 per hour under the old

plan, while under the new plan during the same test period he would have earned $3.090 per hour. The difference between these two figures resulted in the establishment of an IA on April 17, 1960 of 17.1¢ per hour for a Millwright. (In the same way, an IA was established for every other indirect job involved.) When the indirect incentive plan was put into effect this IA was put into effect and paid to the Millwright for all incentive hours worked, regardless of incentive performance. See Company's answers to Plaintiff's interrogatories, December 8, 1966, Exhibit 4-A.

The importance of the IA is that when an adjustment is made in a direct plan, such as those made on May 7, 1961 and June 10, 1962, the effect of this adjustment on the new plan earnings of the indirect workers for the test period is calculated and the IA of the indirect workers is adjusted accordingly. If the new plan earnings go up, the IA is reduced; if the new plan earnings go down, the IA is increased. Taking the case of a Millwright as an example, his old plan earnings were $3.261 per hour. Under the new plan, as revised, he would have made $3.096 per hour in the test period, an increase of 6 mills per hour over the $3.090 per hour he would have earned under the plan as instituted April 17, 1960, prior to any adjustments. When his earnings under the revised plan increased 6 mills, the IA was reduced from the then existing 17.7¢* per hour to 17.1¢ per hour as a result of the narrowing of the gap between the old plan earnings ($3.261) and the new plan earnings ($3.096) as tested during the representative test period.

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*IA had increased from 17.1¢ to 17.7¢ due to December 1, 1960 general wage increase.

Affidavit of Rae Williamson in Support of Summary Judgment.

THE ONE HUNDRED PERCENT FLOOR

The next factor which should be borne in mind as one considers the potential impact upon the earnings of the indirect workers when the plans of the direct workers are adjusted is the provision in the indirect plans which provides that the minimum percent performance (per turn or per week depending on the direct plan involved) which will be calculated into the indirect plans will never be less than 100%. For example, if the percent performance on a given turn on the 54-inch Tandem Mill (one of the direct plan units) was 88%, the percent used in the calculation of the indirect plan would be raised to 100%. The employee working under an indirect plan will never be paid less than the sum of his SHWR and IA because of the subpar performance of any of the direct contributing units, but conversely will always be credited with 67% of the combined percent performance of the direct units that is in excess of 100%.

If an adjustment to the 54-inch Tandem Mill plan resulted in increasing the performance on the example turn from 88% to 95%, it would have no impact whatsoever on the performance or earnings of the indirect employees. 100% would continue to be used in the calculation of the indirect plan on that turn. Under these circumstances, adjustments to any direct plan which result in increased individual performances that continue to remain below the 100% level do not in any way change the performance of the indirect plan and therefore have absolutely no effect on the incentive earnings of the indirect employees.

The significance of the foregoing is the fact that when the standards under the direct plans are adjusted, there will not

necessarily be a benefit flowing through to the indirect worker. With respect to the direct plans contributing to the electrical and mechanical maintenance plans, a substantial number of turns during the retroactive period were below 100% performance. During 1961, for instance, approximately 50% of the turns in the Skin Mills and 40% of the turns in the 54-inch Tandem Mill were below 100%.

WEIGHT OF DIRECT PLAN CONTRIBUTION

The third item that should be remembered when considering the impact of direct plan changes on indirect plans is the weight of the direct plan contribution.

The incentive rate for the electrical and mechanical maintenance employees is based on the weighted average percent performance of seven direct units. The weight of the contribution from each of these units to the indirect plan is as follows:

Direct Unit	Factor	Percentage Contribution
Hot Mill Proper	9	45%
Hot Mill Shipping	1	5
#1, 2 & 3 Cont. Pickler	3	15
54 and 75" Tandem Mills	2	10
Annealing	1	5
#2, 3 & 5 Skin Mills	2	10
Cold Mill Shipping	2	10
	20	100%

Since the indirect employees' incentive is based on the weighted average percent performance of all of the contributing

units, the weight of the contribution from any direct plan which is adjusted determines the effect of that adjustment on the indirect plan. For example, if the incentive plan for #2, 3 & 5 Skin Mills were adjusted by increasing all standards by 5%, the incentive performance for the Skin Mills, themselves, would increase 5%. However, the effect of that adjustment on the indirect incentive plan performance would be an increase of only 1/2 of 1% (10% of 5% = .5%)

DIRECT PLAN ADJUSTMENTS

As described in Mr. Evenden's affidavit, as a result of grievances filed in relation to direct incentive plans, adjustments were made in some of the direct plans. On May 7, 1961, certain standards were adjusted in the plans for the 54-inch Tandem Mill and Hot Mill proper, and on June 10, 1962, certain adjustments were made in the Annealing and Skin Mill plans. In order to determine what effect, if any, these direct plan adjustments would have on the indirect employees' IA, the indirect new plan performance figures during the 13 week test period were recalculated and the resultant earnings for each job were then compared to the earnings for the same jobs under the old plan.

For example, as can be seen from Exhibit 5, attached to the Company's answers to interrogatories filed December 8, 1966, the percent performance of the original indirect new plan during the test period was 111.80%. When the indirect plan was again computed for the test period, taking into account the adjustments in direct plan standards made on May 7, 1961, the indirect plan performance was 112%, or an increase of two-tenths of one percent.

When the indirect plan was likewise run through the test period taking into account the June 10, 1962 adjustments made to direct plans, the result was an indirect plan performance of 112.37% or an additional increase of less than four-tenths of one percent.

These increases in indirect plan percent performance that resulted from adjustments in direct workers' incentive plans can be applied to the SHWR for an indirect plan job to determine the effect such adjustments would have had on the hourly earnings of that job during the test period. Thus, the hourly earnings of a Millwright with a SHWR of $2.763, under the original new plan during the test period would have been $3.090 ($2.764 x 111.80%).

When the two-tenths of one percent increase in performance that resulted from the May 7, 1961 direct plan adjustments is taken into account, the test period earnings of a Millwright increase 6 mills per hour from $3.090 to $3.096. ($2.764 x .20% = $.006). When the .37% increase in percent performance that resulted from the June 10, 1962 adjustments is considered in the same way, the Millwright's earnings increase another 10 mills per hour from $3.096 to $3.106 ($2.764 x .37% = $.010).

Since the IA already in effect and being paid to the Millwright at the time these adjustments were made in 1961 and 1962 (17.7¢) was higher (in fact ten times higher) than the increased incentive earnings (16 mills) that resulted during the test period, a Millwright actually received no increase in net earnings. As explained earlier, whenever test period earnings for a new plan go up, the IA in effect goes down to the

extent of the increase. Thus, when the Millwrights' test period earnings rose 6 mills on May 7, 1961 due to the adjustments in the direct workers' plans, his IA of 17.7¢ per hour was reduced to 17.1¢ per hour. In the same fashion the June 10, 1962 hourly increase of 10 mills produced a reduction of the Millwright's IA by 10 mills.* See Exhibit 4-A, sheet 1, Columns "B", "C", "D" and "E" attached to Company's answers to interrogatories filed December 8, 1966.

In indirect incentive plans where a substantial IA has been established such as existed in this plan, retroactive adjustments in direct plans (such as those made on May 7, 1961 and June 10, 1962) will have no effect on indirect earnings if conditions following the test period remain comparable to what they were during the test period.

One other adjustment benefitting direct workers which could have affected the plaintiffs herein is a minor monetary adjustment which involved the Continuous Picklers. In resolution of all grievances filed by direct workers on the Picklers, the Company and Union, in 1966, agreed that a payment of 2-1/2¢ per hour would be paid the employees working on Pickler Line No. 1, and eight-tenths of a cent per hour would be paid to employees whose incentive was based on the average performance of all three lines for each hour worked during the period from February 28, 1960 through October 24, 1964.

Although these hourly payments were of some benefit to certain employees in the Continuous Picklers, they involved no

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*The figure of 10 mills varies slightly from the 11 mills differential demonstrated on Exhibit 4-A, due to a general wage increase which is unrelated to this litigation.

changes in the direct plan, and therefore no benefit would flow to the indirect workers through the operation of the indirect plans. Even if a proportionate amount were calculated for the indirect employees in the mechanical and electrical maintenance jobs, the monetary benefit would be negligible.

This is due to the small effect which the single line (Line 1) of the Continuous Picklers department has on the entire indirect incentive plan under which the plaintiffs are paid. The weighted contribution of the Continuous Picklers to the overall indirect plan is 3/20 or 15%. However, since the pickling operation includes three lines, the effect attributable to line number 1 of the Continuous Picklers is one-third of 15% or 5%. The settlement figure used to compute retroactive payments to the direct employees working on Line No. 1 was $.025 per hour. 5% of this settlement figure would yield a monetary per hour figure of $.00125 per hour or just over 1 mill per hour. 67% of $.00125 per hour would yield a payment of $.0008375, or just under 1 mill per hour for indirect maintenance employees. Assuming that a maintenance employee worked 2,000 hours in a given year, the retroactive payment for that employee before taxes and legal deductions would then amount to approximately $1.68 for the entire year.

RETROACTIVE PAYMENT TO DIRECT WORKERS

Although detailed records of the retroactive amounts paid to direct workers as a result of adjustments in their plans are not available, summary notations retained by the Industrial Engineering Department indicate that the following hourly amounts

were paid retroactively to certain key direct workers in each unit:

Direct Unit Plan	Position	SHWR as of 4/17/60	Hourly Retroactive Payment
Hot Mill	Ass't. Roller	$3.099	$.021
54-inch Tandem Mill	Roller	$3.501	minus $.007*
Skin Mills #2, 3 & 5	Roller	$2.965	$.032
Annealing	Loco. Tractor Oper.	$2.362	$.020
#1 Continuous Pickler	Recoiler Operator	$2.429	$.025

If there had been a computation of the retroactive payments due to indirect employees based on the above figures, factored to reflect the percentage contribution each of the direct plans makes to the indirect plan, and further factored by the application of the 67% formula, the average hourly retroactive payment due an indirect employee would be $.009 or less than one cent. The foregoing calculation is set forth in detail in Exhibit 4 attached hereto.

If the above procedure were used, the size of any payment due the indirect employees would be further reduced by the fact that SHWRs on which the above hourly amounts were based, were on the average higher than those of the indirect employees involved in this lawsuit and by the fact that for a substantial period of time (May 7, 1961 through June 9, 1962) the indirect employees were paid earnings that reflected the adjustments in the Hot Mill proper and the 54-inch Tandem Mill plans. The foregoing procedure does not reflect the diluting effect that the 100% guaranteed floor has on the indirect plan.

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*Although the Roller on the 54-inch Tandem Mill received a net hourly retroactive payment of 6.6¢, this included a correction in old plan earnings of 7.3¢ per hour (which would have no effect on the indirect workers). The difference of 7 mills can be attributed to the revisions in the standards and IA.

Affidavit of Rae Williamson in Support of Summary Judgment.

TENDER OF RETROACTIVE PAYMENT

In 1966, concurrent with the settlement of the last outstanding grievance dealing with a potential retroactive adjustment to a direct plan, the Company began to compute the amount of retroactive payments that might be due the indirect employees as a result of the direct plan adjustments.

At the time that such computations were initiated, and prior to the initiation of this lawsuit, it was discovered that certain accounting department records needed to accurately compute the retroactive amounts, if any, due the indirect employees were missing. Deponent was informed that the missing records consisted of individual production records for each contributing direct unit and records showing the individual percent performances for certain of the direct units (Skin Mills, Annealing and part of the Hot Mill proper) using the adjusted standards.

Recognizing that the lost records prevented a precise calculation of retroactive payments, if any, due to the indirect employees, the Company undertook a calculation to arrive at a formula for retroactive payments to present to the Union. It was against this background that the following procedure was adopted:

(1) The Company computed the average hourly earnings of a Millwright during the period April 17, 1960 through June 9, 1962 based on the average weekly percent performance of the indirect plan, the SHWR in effect on October 1, 1961 and the applicable IAs for the Millwright job. The resulting average hourly earnings

figure for the Millwright job was $3.365.

(2) The Company then computed the average hourly earnings of a Millwright for the period June 10, 1962 through May 21, 1966, again using average weekly percent performance figures from the indirect plan, the SHWR in effect on October 1, 1961 and applicable IAs for the Millwright job. The result was an average hourly earnings figure of $3.408. (During this period, the indirect workers were receiving current payments predicated on the plans as adjusted.)

(3) The second average, which represented earnings that took into account all the adjustments to the direct contributing plans and corresponding IA adjustments for the Millwright job, was then compared to the first average, which represented a period during which some or all of these adjustments had not yet been put into effect.

(4) This comparison showed that a Millwright earned $.043 more per hour in the period June 10, 1962 through May 21, 1966, than he did in the period April 17, 1960 through June 9, 1962.

The conclusion was then made that in light of the lost records, the difference in earnings per hour represented a fair retroactive payment for the Millwrights as a result of the adjustments made in the four direct plans described in Mr. Evenden's affidavit.

(5) In order to determine the hourly retroactive amounts for other jobs with their different standard hourly wage rates,

this cents per hour figure ($.043) was then expressed as a factor of the standard hourly wage rate in effect on October 1, 1961 for the Millwright, and a universal factor of .0146 ($.043 ÷ $2.94) was arrived at, which was then applied to the standard hourly wage rate in effect on October 1, 1961 for each position.

The results of the computation produced a cents per hour figure for each electrical maintenance and mechanical maintenance job which could then be applied to each employee in those jobs, based on the number of hours each such employee worked in the affected jobs during the period retroactive payments were due, namely, from April 17, 1960 through and including June 9, 1962. A copy of these calculations and the resulting cents per hour payments for each job is contained in the Company's answers to interrogatories dated September 11, 1968, Exhibit 6.

A review of the aforementioned Exhibit 6 indicates the generosity and fairness of the Company's tender of retroactive payments. As noted above, the Company made a precise calculation of the effect that the direct plan adjustments had on indirect workers' earnings for the 13 week test period. The result was only an additional 16 mills per hour before it was wiped out by the IA adjustment. It is doubtful that application of the adjustments to any other period would produce earnings increases of much more than 16 mills and such a figure would have to be reduced by the IA adjustment. Thus, it can be seen that the Company's tender of payment represents an hourly earnings figure substantially higher than any figure that would have been based on actual production records.

Affidavit of Rae Williamson in Support of Summary Judgment.

Moreover, the direct workers' incentive plans on which the indirect plan was based had all been properly established by the Company and by the time the settlement calculations were made any defects in the plans had been adjusted through the grievance procedure or arbitration. Therefore, the alternative method of computing the retroactive payments tendered was based on proper plans affirmed by the parties themselves and should not be open to attack at this point.

Rae Williamson

Rae Williamson

Sworn to before me this
1st day of November, 1972.

Notary Public

Exhibit 1 Attached to Affidavit of
Rae Williamson.

STANDARD DATA SHEET

Indiana Harbor Sheet, Strip & Plate Mills	ELECTRICAL MAINTENANCE CONTINUOUS SHEET, STRIP & PLATE MILLS	1-17-63

The Electrical Maintenance positions which service the Continuous Sheet, Strip & Plate Mills Department are to be paid an incentive based on the performance of the following primary units plus the results of a Hot Mill Shipping plan and a Cold Mill Shipping plan which are intended to reflect the performance of all of the various finishing units in this department.

Hot Strip Mill Proper

Continuous Pickling

Tandem Mills

Annealing

Skin Mills

Exhibit 1 Attached to Affidavit of
Rae Williamson.

INDUSTRIAL ENGINEERING
STANDARD DATA SHEET

SUBJECT TO CHANGE

PLANT			
Lackawanna	ELECTRICAL MAINTENANCE CONTINUOUS SHEET, STRIP & PLATE MILLS		
DEPARTMENT Cont. Sheet, Strip & Plate Mills		4-17-60 REVISED DATE	

Incentive Plan - Hot Mill Shipping

Development

Based on an analysis of the net tons shipped from the Hot Mill for the year of 1957, it was determined that the average maximum tons shipped per shipping turn during the pay period was 1051. Using this figure as a basis, the following standard turns per 1000 net tons shipped per shipping turn during the pay period was calculated.

1000 ÷ 1051 = .951 base turns per 1000 net tons shipped per shipping turn

.951 + 35.13% = 1.29 standard turns per 1000 net tons shipped per shipping turn

Application

Incentive to be expressed in terms of a percentage performance, calculated as follows:

$\frac{A}{B}$ expressed in terms of a percentage

A = Total net tons shipped during the pay period multiplied by 1.29 standard turns per 1000 tons.

B = Total shipping turns during the pay period.

Note: Any tonnage on a turn when only coils are shipped to be excluded from "A" and any turns when only coils are shipped to be excluded from "B".

Exhibit 1 Attached to Affidavit of
Rae Williamson.

INDUSTRIAL ENGINEERING
STANDARD DATA SHEET

SUBJECT TO CHANGE

PLANT		DATE ISSUED	
Lackawanna	ELECTRICAL MAINTENANCE	1-17-60	
DEPARTMENT Cont. Sheet, Strip & Plate Mills	CONTINUOUS SHEET, STRIP & PLATE MILLS	REVISED DATE	

Incentive Plan - Cold Mill Shipping

Development

Based on an analysis of the net tons shipped from the Cold Mill from January 1959 through February 1960, it was determined that the average maximum tons shipped per shipping turn during the pay period was 2135. Using this figure as a basis, the following standard turns per 1000 net tons shipped per shipping turn during the pay period was calculated.

1000 ÷ 2135 = .468 base turns per 1000 net tons shipped per shipping turn

.468 + 35.13% = .632 standard turns per 1000 net tons shipped per shipping turn

Application

Incentive to be expressed in terms of a percentage performance, calculated as follows:

$\frac{A}{B}$ expressed in terms of a percentage

A = Total net tons shipped during the pay period multiplied by .632 standard turns per 1000 tons.

B = Total shipping turns during the pay period.

Exhibit 1 Attached to Affidavit of Rae Williamson.

INDUSTRIAL ENGINEERING
STANDARD DATA SHEET

SUBJECT TO CHANGE

PLANT		EFFECTIVE DATE	LABOR GRADES
Lackawanna DEPARTMENT Cont. Sheet, Strip & Plate Mills	SUBJECT: MAINTENANCE CONTINUOUS SHEET, STRIP & PLATE MILLS	4-17-60 REVISED DATE	

Method of Payment

The [illegible] Maintenance positions which service the Continuous Sheet, Strip & Plate Mills Department are to be paid in addition to standard hourly wage rate a premium equal to 67% of each 1% by which the average factored percentage performance of the Hot Mill Proper, Hot Mill Shipping, Continuous Picklers, Tandem Mills, Annealing, Skin Mills and Cold Mill Shipping during the pay period exceeds 100%, calculated as follows:

$\frac{A}{B}$ = average factored percentage performance

A = (1) The average percentage performance of the Hot Mill Proper during the pay period multiplied by 9; plus

(2) The average percentage performance of the Hot Mill Shipping during the pay period; plus

(3) The average percentage performance of #1, #2 and #3 Continuous Picklers during the pay period multiplied by 3; plus

(4) The average percentage performance of the 54" and 75" Tandem Mills during the pay period multiplied by 2; plus

(5) The average percentage performance of the Annealing furnaces (#1-#6, #76-#86, #101-#110, #111-#120, #201-#214, #301-#305) during the pay period; plus

(6) The average percentage performance of #2, #3 and #5 Skin Mills during the pay period multiplied by 2; plus

(7) The average percentage performance of the Cold Mill Shipping during the pay period multiplied by 2.

B = (1) 9 - if the Hot Mill Proper operated during the pay period; plus

(2) 1 - if any sheet or plate tonnage was shipped from the Hot Mill during the pay period; plus

(3) 3 - if #1, #2 or #3 Continuous Pickler operated during the pay period; plus

(4) 2 - if the 54" or 75" Tandem Mill operated during the pay period; plus

(5) 1 - if any Annealing Furnace (#1-#6, #76-#86, #101-#110, #111-#120, #201-#214, #301-#305) was pulled during the pay period; plus

(6) 2 - if #2, #3 or #5 Skin Mill operated during the pay period; plus

(7) 2 - if any tonnage was shipped from the Cold Mill during the pay period.

Exhibit 1 Attached to Affidavit of
Rae Williamson.

INDUSTRIAL ENGINEERING
STANDARD DATA SHEET
16131 (12-54)

SUBJECT TO CHANGE

PLANT		EFFECTIVE DATE	DATA SHEET NO.
Lackawanna	ELECTRICAL MAINTENANCE	4-17-60	
DEPARTMENT Cont. Sheet, Strip & Plate Mills	CONTINUOUS SHEET, STRIP & PLATE MILLS	REVISED DATE	

Method of Payment (Continued)

Note: (1) Minimum percentage performance per turn for each of the following units to be no less than 100%.

Hot Mill Proper
#1 Continuous Pickler
#2 Continuous Pickler
#3 Continuous Pickler
54" Tandem Mill
75" Tandem Mill
#2 Skin Mill
#3 Skin Mill
#5 Skin Mill

(2) Minimum percentage performance per pay period for each of the following to be no less than 100%.

Cold Mill Shipping
Hot Mill Shipping

(3) Minimum percentage performance per pay period for each of the following group of Annealing furnaces to be no less than 100%.

Sheet #76-#86
Lee Wilson #1 - #6
4 Stack #101-#110
8 Stack #111-#120
8 Stack #201-#214
8 Stack #301-#305

Exhibit 1 Attached to Affidavit of Rae Williamson.

INDUSTRIAL ENGINEERING
STANDARD DATA SHEET
22070 (2-59)

SUBJECT TO CHANGE

Plant		Effective Date	Sheet No.
Lackawanna Department Cont. Sheet, Strip & Plate Mills	ELECTRICAL MAINTENANCE CONTINUOUS SHEET, STRIP & PLATE MILLS	4-17-60 Revised Date	

APPLICATION OF SECTION 5 (b) of MAY 25, 1956 SUPPLEMENTAL AGREEMENT

In order to comply with the provisions of Section 5 (b) referred to above, an incentive adjustment is established for each position in which the earnings during the representative period under the old incentive plan exceeded the earnings which would have been earned during that period under the new plan. The representative period in this case was from 7-5-59 to 1-30-60* . The positions covered by subject incentive plan, their earnings during the representative period and the resulting incentive adjustments, if any, are shown below:

* Excluding weeks ending 7-18-59 thru 11-7-59 because of strike.

Position	Standard Hourly Wage Rate 7-1-58	PAY or P and Ref Mk	AVERAGE HOURLY EARNINGS ($) Old Plan	AVERAGE HOURLY EARNINGS ($) New Plan	Incentive Adjustment I.A. ($)
Motor Room Operator	$2.764	P - A	$3.261	$3.090	$ .171
Motor Room Attendant "A"	2.630	P - A	3.090	2.940	.150
Motor Room Attendant "B"	2.496	P - A	2.919	2.791	.128
Motor Room Attendant "C"	2.362	P - A	2.743	2.641	.102
Motor Room Attendant Helper	2.228	P - A	2.594	2.491	.103
Crane Millwright	2.764	P - A	3.261	3.090	.171
Crane Repairman "A"	2.630	P - A	3.090	2.940	.150
Crane Repairman "B"	2.496	P - A	2.919	2.791	.128
Crane Repairman "C"	2.362	P - A	2.743	2.641	.102
Crane Repairman Helper	2.228	P - A	2.594	2.491	.103
Crane Oiler	2.228	P - A	2.615	2.491	.124
Motor Inspector	2.764	P - A	3.261	3.090	.171
Electrical Repairman "A"	2.630	P - A	3.090	2.940	.150
Electrical Repairman "B"	2.496	P - A	2.919	2.791	.128
Electrical Repairman "C"	2.362	P - A	2.743	2.641	.102
Electrical Helper	2.228	P - A	2.594	2.491	.103
Electrical Oiler	2.228	P - A	2.594	2.491	.103

Exhibit 1 Attached to Affidavit of Rae Williamson.

INDUSTRIAL ENGINEERING
STANDARD DATA SHEET

SUBJECT TO CHANGE

UNIT		EFFECTIVE DATE	SHEET NUMBER
Lackawanna DEPARTMENT Cont. Sheet, Strip & Plate Mills	ELECTRICAL MAINTENANCE CONTINUOUS SHEET, STRIP & PLATE MILLS	4-17-60 REVISED DATE	

When working the position under which they are listed the following individuals are to be paid the hourly incentive earnings of that position or the personal hourly earnings indicated below, whichever produces the greater earnings during the pay period.

Position	Number	Name	Minimum Incentive Earnings Per Hour
Crane Oiler	432-26	Gallagher, J.	$2.539
	432-73	Kozak, S.	2.539
Electrical Oiler	432-30	Kszamak, C.	2.514

When working the position of Motor Room Attendant the following individuals are to receive the incentive rate of the position plus $.120 for each hour worked on incentive.

432-38	Thompson, A.
432-47	McCann, E.
432-48	Benzee, E.
432-49	Connor, W.
432-53	Kollmar, E.
432-62	Tokac, M.

Exhibit 1 Attached to Affidavit of Rae Williamson.

STANDARD DATA SHEET

Jackawanna Cont. Sheet, Strip & Plate Mills	ELECTRICAL MAINTENANCE CONTINUOUS SHEET, STRIP AND PLATE MILLS	4-17-60	

Example of Rate Application
(Week Ending 12-5-59)

	Unit	Average Percentage Performance for Week	Factor	Total
a =	Hot Mill Proper	129.02	9	1161.18
	Hot Mill Shipping	111.57		111.57
	Continuous Picklers	108.06	3	324.18
	Tandem Mills	110.78	2	221.56
	Annealing	114.96		114.96
	Coil Skin Mills	117.11	2	234.22
	Cold Mill Shipping	118.31	2	236.62
				2404.29
b =	Hot Mill Proper			9
	Hot Mill Shipping			1
	Continuous Picklers			3
	Tandem Millls			2
	Annealing			1
	Coil Skin Mills			2
	Cold Mill Shipping			2
				20

c = Average factored percentage performance (a ÷ b) = 120.21%

d = Percentage performance in excess of 100% (C - 100%) = 20.21%

e = Percent increase for premium position (d x .67) = 13.54%

Position	S.H.W.R. 7-1-58	Percent Gain	Incentive Earnings Per Hour	Adjustment Per Hour	Total Earnings Per Hour
Crane Millwright	$2.764	13.54%	$3.138	$.171	$3.309

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Exhibit 2 Attached to Affidavit of Rae Williamson.

INDUSTRIAL ENGINEERING
STANDARD DATA SHEET

SUBJECT TO CHANGE

PLANT		EFFECTIVE DATE	EARLY REVISION
Lackawanna DEPARTMENT Cont. Sheet, Strip & Plate Mills	MECHANICAL MAINTENANCE CONTINUOUS SHEET, STRIP & PLATE MILLS	4-17-60 REVISED DATE	

The Mechanical Maintenance positions which service the Continuous Sheet, Strip & Plate Mills Department are to be paid an incentive based on the performance of the following primary units plus the results of a Hot Mill Shipping plan and a Cold Mill Shipping plan which are intended to reflect the performance of all of the various finishing units in this department.

Hot Mill Proper

Continuous Pickling

Tandem Mills

Annealing

Skin Mills

EXH [illegible]

Exhibit 2 Attached to Affidavit of Rae Williamson.

INDUSTRIAL ENGINEERING
STANDARD DATA SHEET

SUBJECT TO CHANGE

PLANT		EFFECTIVE DATE	DATA NUMBER
Lackawanna	MECHANICAL MAINTENANCE CONTINUOUS SHEET, STRIP & PLATE MILLS	4-17-60	
DEPARTMENT Cont. Sheet, Strip & Plate Mills		REVISED DATE	

Incentive Plan - Hot Mill Shipping

Development

Based on an analysis of the net tons shipped from the Hot Mill for the year of 1957, it was determined that the average maximum tons shipped per shipping turn during the pay period was 1051. Using this figure as a basis, the following standard turns per 1000 net tons shipped per shipping turn during the pay period was calculated.

1000 ÷ 1051 = .951 base turns per 1000 net tons shipped per shipping turn

.951 + 35.13% = 1.29 standard turns per 1000 net tons shipped per shipping turn

Application

Incentive to be expressed in terms of a percentage performance, calculated as follows:

$\frac{A}{B}$ expressed in terms of a percentage

A = Total net tons shipped during the pay period multiplied by 1.29 standard turns per 1000 tons.

B = Total shipping turns during the pay period.

Note: Any tonnage on a turn when only coils are shipped to be excluded from "A" and any turns when only coils are shipped to be excluded from "B".

Exhibit 2 Attached to Affidavit of Rae Williamson.

INDUSTRIAL ENGINEERING
STANDARD DATA SHEET

SUBJECT TO CHANGE

PLANT		EFFECTIVE DATE	SHEET NUMBER
Lackawanna DEPARTMENT Cont. Sheet, Strip & Plate Mills	MECHANICAL MAINTENANCE CONTINUOUS SHEET, STRIP & PLATE MILLS	10-1760 REVISED DATE	

Incentive Plan - Cold Mill Shipping

Development

Based on an analysis of the net tons shipped from the Cold Mill from January 1959 through February 1960, it was determined that the average maximum tons shipped per shipping turn during the pay period was 2135. Using this figure as a basis, the following standard turns per 1000 net tons shipped per shipping turn during the pay period was calculated.

1000 ÷ 2135 = .468 base turns per 1000 net tons shipped per shipping turn

.468 + 35.3% = .632 standard turns per 1000 net tons shipped per shipping turn

Application

Incentive to be expressed in terms of a percentage performance, calculated as follows:

$\frac{A}{B}$ expressed in terms of a percentage

A = Total net tons shipped during the pay period multiplied by .632 standard turns per 1000 tons.

B = Total shipping turns during the pay period.

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Exhibit 2 Attached to Affidavit of Rae Williamson.

INDUSTRIAL ENGINEERING
STANDARD DATA SHEET

PLANT		SUBJECT TO CHANGE	
Lackawanna DEPARTMENT Cont. Sheet, Strip & Plate Mills	MECHANICAL MAINTENANCE CONTINUOUS SHEET, STRIP & PLATE MILLS	EFFECTIVE DATE 4-17-60 COVER DATE	SUPERSEDES

Method of Payment

The Mechanical Maintenance positions which service the Continuous Sheet, Strip & Plate Mills Department are to be paid in addition to standard hourly wage rate a premium equal to 67% of each 1% by which the average factored percentage performance of the Hot Mill Proper, Hot Mill Shipping, Continuous Picklers, Tandem Mills, Annealing, Skin Mills and Cold Mill Shipping during the pay period exceeds 100%, calculated as follows:

$\frac{A}{B}$ = average factored percentage performance

A = (1) The average percentage performance of the Hot Mill Proper during the pay period multiplied by 9; plus

(2) The average percentage performance of the Hot Mill Shipping during the pay period; plus

(3) The average percentage performance of #1, #2 and #3 Continuous Picklers during the pay period multiplied by 3; plus

(4) The average percentage performance of the 54" and 75" Tandem Mills during the pay period multiplied by 2; plus

(5) The average percentage performance of the Annealing furnaces (#1-#6, #76-#86, #101-#110, #111-#120, #201-#214, #301-#305) during the pay period; plus

(6) The average percentage performance of #2, #3 and #5 Skin Mills during the pay period multiplied by 2; plus

(7) The average percentage performance of the Cold Mill Shipping during the pay period multiplied by 2.

B = (1) 9 - if the Hot Mill Proper operated during the pay period; plus

(2) 1 - if any sheet or plate tonnage was shipped from the Hot Mill during the pay period; plus

(3) 3 - if #1, #2 or #3 Continuous Pickler operated during the pay period; plus

(4) 2 - if the 54" or 75" Tandem Mill operated during the pay period; plus

(5) 1 - if any Annealing Furnace (#1-#6, #76-#86, #101-#110, #111-#120, #201-#214, #301-#305) was pulled during the pay period, plus

(6) 2 - if #2, #3 or #5 Skin Mill operated during the pay period; plus

(7) 2 - if any tonnage was shipped from the Cold Mill during the pay period.

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Exhibit 2 Attached to Affidavit of Rae Williamson.

INDUSTRIAL ENGINEERING
STANDARD DATA SHEET
13231 (12-58)

SUBJECT TO CHANGE

ct, ills	MECHANICAL MAINTENANCE CONTINUOUS SHEET, STRIP & PLATE MILLS	EFFECTIVE DATE 4-17-60 REVISED DATE	SHEET NUMBER

Method of Payment (Continued)

Minimum percentage performance per turn for each of the following units to be no less than 100%.

Hot Mill Proper
#1 Continuous Pickler
#2 Continuous Pickler
#3 Continuous Pickler
54" Tandem Mill
75" Tandem Mill
#2 Skin Mill
#3 Skin Mill
#5 Skin Mill

Minimum percentage performance per pay period for each of the following to be no less than 100%.

Cold Mill Shipping
Hot Mill Shipping

Minimum percentage performance per pay period for each of the following group of Annealing Furnaces to be no less than 100%.

Sheet #75-#86
Ice Welder #1 - #6
4 Stack #101-#110
8 Stack #111-#120
8 Stack #201-#214
6 Stack #301-#305

Exhibit 2 Attac
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23978 (2-

Plant Lackawanna	MECHANICA
Department Cont. Sheet, Strip & Plate Mills	CONTINUOUS SHEET,

APPLICATION OF SECTION 5 (b) of MA

In order to comply with the provisions of
established for each position in which the earnings du
exceeded the earnings which would have been earned
period in this case was from 7-5-59 to 1-30-
their earnings during the representative period and the

* Excluding weeks ending 7-18-59 thru 1

Position	Stand Hour Wage Rate 7-1-5
Millwright	$2.76
Mechanical Repairman "A"	2.63
Mechanical Repairman "B"	2.49
Mechanical Repairman "C"	2.36
Mechanical Helper	2.22
Welder "A"	2.76
Welder "B"	2.63
Welder "C"	2.49
Automotive Mechanic	2.76
Automotive Repairman "A"	2.63
Automotive Repairman "B"	2.49
Automotive Repairman "C"	2.36
Automotive Repairman Helper	2.16
Automotive Greaser	2.16
Craneman	2.36
Machinist Leader	3.03
Machinist "A"	2.89
Machinist "B"	2.76
Machinist "C"	2.63
Machinist Helper	2.16
Shear Blade Grinder	2.29
Rotary Surface Grinder	2.29
Machine Operator "A"	2.49
Machine Operator "B"	2.36
Machine Operator "C"	2.22
Mechanical Repairman "A"	2.63
Mechanical Repairman "B"	2.49
Mechanical Repairman "C"	2.36

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STRIAL ENGINEERING
DARD DATA SHEET
59)

SUBJECT TO CHANGE

	Effective Date	Sheet No.
AL MAINTENANCE STRIP & PLATE MILLS	4-17-60 Revised Date	

Y 25, 1956 SUPPLEMENTAL AGREEMENT

Section 5 (b) referred to above, an incentive adjustment is
ring the representative period under the old incentive plan
during that period under the new plan. The representative
60 * . The positions covered by subject incentive plan,
resulting incentive adjustments, if any, are shown below:

1-7-59 because of strike.

ord y 8	PW or P and Ref. Mk.	AVERAGE HOURLY EARNINGS ($)		Incentive Adjustment I.A. ($)
		Old Plan	New Plan	
4	P - A	$3.261	$3.090	$ .171
0	P - A	3.090	2.940	.150
6	P - A	2.919	2.791	.128
2	P - A	2.743	2.641	.102
8	P - A	2.594	2.491	.103
4	P - A	3.261	3.090	.171
0	P - A	3.090	2.940	.150
6	P - A	2.919	2.791	.128
4	P - A	3.261	3.090	.171
0	P - A	3.090	2.940	.150
6	P - A	2.919	2.791	.128
2	P - A	2.743	2.641	.102
1	P - A	2.508	2.416	.092
1	P - A	2.508	2.416	.092
2	P - A	2.718	2.641	.077
2	P - A	3.554	3.390	.164
8	P - A	3.387	3.240	.147
4	P - A	3.220	3.090	.130
0	P - A	3.053	2.940	.113
1	P - A	2.489	2.416	.073
5	P - A	2.635	2.566	.069
5	P - A	2.635	2.566	.069
5	P - A	2.885	2.791	.094
2	P - A	2.718	2.641	.077
8	P - A	2.550	2.491	.059
0	P - A	3.053	2.940	.113
5	P - A	2.885	2.791	.094
2	P - A	2.718	2.641	.077

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Exhibit 2 Attached to Affidavit of Rae Williamson.

INDUSTRIAL ENGINEERING
STANDARD DATA SHEET
23978 (2-59)

SUBJECT TO CHANGE

Plant		Effective Date	Sheet No.
Lackawanna Department Cont. Sheet, Strip & Plate Mills	MECHANICAL MAINTENANCE CONTINUOUS SHEET, STRIP & PLATE MILLS	4-17-60 Revised Date	

APPLICATION OF SECTION 5 (b) of MAY 25, 1956 SUPPLEMENTAL AGREEMENT

In order to comply with the provisions of Section 5 (b) referred to above, an incentive adjustment is established for each position in which the earnings during the representative period under the old incentive plan exceeded the earnings which would have been earned during that period under the new plan. The representative period in this case was from 7-5-59 to 1-30-60 * . The positions covered by subject incentive plan, their earnings during the representative period and the resulting incentive adjustments, if any, are shown below:

* Excluding weeks ending 7-18-59 thru 11-7-59 because of strike.

Position	Standard Hourly Wage Rate 7-1-58	PW or P and Ref. Mk.	AVERAGE HOURLY EARNINGS ($) Old Plan	AVERAGE HOURLY EARNINGS ($) New Plan	Incentive Adjustment I.A. ($)
(Continued)					
Blacksmith "A"	$2.831	P - A	$3.304	$3.165	$ .139
Blacksmith "B"	2.697	P - A	3.136	3.015	.121
Blacksmith "C"	2.563	P - A	2.969	2.865	.104
Blacksmith Helper	2.228	P - A	2.550	2.491	.059
Storekeeper (Shop)	2.027	P - A	2.334	2.266	.068
Tractor Operator	2.295	P - A	2.658	2.566	.092
Oiler & Greaser Leader	2.630	P - A	3.090	2.940	.150
Oil System Man	2.496	P - A	2.919	2.791	.128
Oil System Man Helper	2.228	P - A	2.585	2.491	.094
Oiler & Greaser	2.228	P - A	2.661	2.491	.170
Oiler & Greaser Helper	2.094	P - A	2.421	2.341	.080
Bearing Machinist	2.831	P - A	3.348	3.165	.183
Bearing Machinist Handyman	2.295	P - A	2.658	2.566	.092
Bearing Repair Helper	2.228	P - A	2.594	2.491	.103
Bearing Changer Machine Operator	2.228	P - A	2.594	2.491	.103
Bearing Changer	2.362	P - A	2.743	2.641	.102
Bearing Changer Helper	2.161	P - A	2.513	2.416	.097
Roll Bearing Washer	1.960	P - A	2.248	2.191	.057
Shear Blade Supplyman	2.429	P - A	2.832	2.716	.116
Shear Blade Supplyman Helper	2.094	P - A	2.421	2.341	.080
Rubber Vulcanizer	2.563	P - A	3.004	2.865	.139

Exhibit 2 Attached to Affidavit of Rae Williamson.

INDUSTRIAL ENGINEERING
STANDARD DATA SHEET

SUBJECT TO CHANGE

Lackawanna	MECHANICAL MAINTENANCE, CONTINUOUS SHEET, STRIP & PLATE MILLS	4-17-60	
Cont. Sheet, Strip & Plate Mills			

When working the position under which they are listed, the following individuals are to be paid the hourly incentive earnings of that position or the personal hourly earnings indicated below, whichever produces the greater earnings during the pay period.

Position	Number	Name	Minimum Incentive Earnings Per Hour
Millwright	422-481	Hanrahan, A.	$3.084
	422-38	Butka, J.	3.084
	422-41	DeSantis, J.	3.084
	422-49	Croce, A.	3.084
	422-63	Pacella, D.	3.084
	422-70	Dicenzo, F.	3.084
	422-74	Fierle, G.	3.084
	422-382	Peters, G.	3.084
	422-40	Culver, R.	3.257
	422-76	Bucheit, F.	3.257
	422-68	Forcucci, P.	3.023
	422-79	[illegible]	3.023
	422-84	Edwards, T.	3.023
	422-97	Paja, J.	3.023
	422-99	Brox, R.	3.023
	422-246	Kozaczka, J.	3.023
	422-230	Kaczor, L.	3.023
Mechanical Helper	422-125	Bierut, T.	2.480
	422-161	Dafchik, E.	2.480
	422-243	Bonafede, J.	2.480
Machinist Helper	422-95	Donarumo, O.	2.341
	422-195	Mulqueen, J. M.	2.343
Oiler & Greaser Leader	422-71	Sazer, S.	3.054
Oil System Man	422-46	Candell, L.	2.767
	422-47	Alessi, J.	2.767
	422-430	Cruchenza, J.	2.767
Oil System Man Helper	422-57	Ziccarelli, A.	2.515
	422-107	Kunz, W.	2.515
	422-155	Newman, C.	2.515
Oiler & Greaser	422-106	Hornberger, L.	2.736
	422-217	Peters, A.	2.736
	422-62	Kozaczka, J.	2.942
	422-162	Potwora, F.	2.465

When working the position of oiler & greaser, individual to receive incentive [illegible] plus $.05 for each hour worked on incentive (not to apply when minimum incentive hourly rate is paid).

Exhibit 2 Attached to Affidavit of Rae Williamson.

INDUSTRIAL ENGINEERING
STANDARD DATA SHEET

SUBJECT TO CHANGE

PLANT		EFFECTIVE DATE	SHEET NUMBER
Lackawanna	MECHANICAL MAINTENANCE CONTINUOUS SHEET, STRIP & PLATE MILLS	4-17-60	
DEPARTMENT Cont. Sheet, Strip & Plate Mills		REVISED DATE	

Position	Number	Name	Minimum Incentive Earnings Per Hour
Bearing Machinist	422-27	Schmitt, J.	$3.095
Bearing Changer	422-59	Pienta, J.	2.630
	422-140	Krytus, J.	2.630
	422-221	Zephro, D.	2.630
	422-226	Fik, J.	2.630
	422-242	Culmo, G.	2.630
	422-178	Kowalski, D.	2.548
	422-123	Krazka, L.	2.548
Bearing Changer Helper	422-107	Kunz, W.	2.489
	422-189	Belford, W.	2.489
	422-127	Szuba, J.	2.412
	422-147	Szafranski, S.	2.412
	422-192	Kamski, L.	2.412

Exhibit 2 Attached to Affidavit of Rae Williamson.

INDUSTRIAL ENGINEERING
STANDARD DATA SHEET
13251 112 540

SUBJECT TO CHANGE

PLANT		EFFECTIVE DATE	SHEET NUMBER
Lackawanna DEPARTMENT Cont. Sheet, Strip & Plate Mills	MECHANICAL MAINTENANCE CONTINUOUS SHEET, STRIP AND PLATE MILLS	7/17/60 REVISED DATE	

Example of Rate Application
(Week Ending 12-5-59)

	Unit	Average Percentage Performance for Week	Factor	Total
a =	Hot Mill Proper	129.02	9	1161.18
	Hot Mill Shipping	111.57		111.57
	Continuous Picklers	108.06	3	324.18
	Tandem Mills	110.78	2	221.56
	Annealing	114.96		114.96
	Coil Skin Mills	117.11	2	234.22
	Cold Mill Shipping	118.31	2	236.62
				2404.29
b =	Hot Mill Proper			9
	Hot Mill Shipping			1
	Continuous Picklers			3
	Tandem Mills			2
	Annealing			1
	Coil Skin Mills			2
	Cold Mill Shipping			2
				20

c = Average factored percentage performance (a ÷ b) = 120.21%

d = Percentage performance in excess of 100% (c - 100%) = 20.21%

e = Percent increase for premium position (d x .67) = 13.54%

Position	S.H.W.R. 7-1-58	Percent Gain	Incentive Earnings Per Hour	Adjustment Per Hour	Total Earnings Per Hour
Millwright	$2.764	13.54%	$3.138	$.171	$3.309

Exhibit 3

BETHLEHEM STEEL CORPORATION

Sheet 1 of 2

Lackawanna Plant

Cont. Sheet, Strip & Plate Mills - Electrical Maintenance - History of Incentive Adjustment Changes

Representative Test Period
7-5-59 to 1-30-60 Excluding
Weeks ending 7-18-59 through
11-7-59 due to strike

Position	Earnings Old Plan	Earnings New Plan	Code: Date of Change:	Incentive Adjustment "A" 4-17-60	"B" 12-1-60	"C" 5-7-61	"D" 10-1-61	"E" 6-10-62	"F" 1-1-66
Motor Room Operator	3.261	3.090		.171	.177	.171	.176	.165	.165
Motor Room Attendant "A"	3.090	2.940		.150	.155	.149	.153	.144	.144
Motor Room Attendant "B"	2.919	2.791		.128	.132	.127	.131	.122	.122
Motor Room Attendant "C"	2.743	2.641		.102	.106	.101	.104	.095	.095
Motor Room Attendant Helper	2.594	2.491		.103	.107	.102	.105	.096	.096
Crane Millwright (Millwright "A")	3.261	3.090		.171	.177	.171	.176	.165	.165
Crane Repair. "A" (Millwright "B")	3.090	2.940		.150	.155	.149	.153	.144	.144
Crane Repair. "B" (Millwright "C")	2.919	2.791		.128	.132	.127	.131	.122	.122
Crane Repairman "C"	2.743	2.641		.102	.106	.101	.104	.095	-
Crane Repairman Helper	2.594	2.491		.103	.107	.102	.105	.096	.096
Crane Oiler	2.615	2.491		.124	.128	.124	.128	.119	.119
Motor Inspector (Motor Insp. "A")	3.261	3.090		.171	.177	.171	.176	.165	.165
Elect. Rep. "A" (Motor Insp. "B")	3.090	2.940		.150	.155	.149	.153	.144	.144
Elect. Rep. "B" (Motor Insp. "C")	2.919	2.791		.128	.132	.127	.131	.122	.122
Elect. Repairman "C"	2.743	2.641		.102	.106	.101	.104	.095	-

Exhibit 3 Attached to Affidavit of Rae Williamson.

BETHLEHEM STEEL CORPORATION

Lackawanna Plant

Cont. Sheet, Strip & Plate Mills - Electrical Maintenance - History of Incentive Adjustment Changes

Representative Test Period
7-5-59 to 1-30-60 Excluding weeks ending 7-18-59 through 11-7-59 due to strike

Position	Earnings		Code: Date of Change:	Incentive Adjustment "A" 4-17-60	"B" 12-1-60	"C" 5-7-61	"D" 10-1-61	"E" 6-10-62	"F" 1-1-66
	Old Plan	New Plan							
Electrical Helper	2.594	2.491		.103	.107	.102	.105	.096	.096
Electrical Oiler	2.594	2.491		.103	.107	.102	.105	.096	.096
Automotive Mechanic	-	-		-	-	-	-	-	.165

Note: Positions in parentheses are those created by Craft Changes (1-1-66)

* Positions eliminated due to Craft Changes (1-1-66)

Code Explanation	Percent Pay Perf.
A - Original "I.A."	111.80%
B - Adjustment for general increase of 12-1-60.	111.80%
C - Adjustments for changes made in Hot Mill Proper and 54" Tandem Mill incentive plans.	112.00%
D - Adjustment for general increase of 10-1-61.	112.00%
E - Adjustments for changes made in annealing and #2, #3 & #5 Skin Mills incentive plans.	112.37%
F - Change due to supplemental agreement on crafts.	112.37%

Exhibit 3 Attached to Affidavit of Rae Williamson.

Exhibit 4 Attached to Affidavit of Rae Williamson.

ALTERNATE PROCEDURE FOR COMPUTING RETROACTIVE PAYMENTS

Direct Unit Plan	Position	S.H.W.R. As of 4-17-60	Hourly Retroactive Payment	Direct Unit's % Contribution To Indirect Plan	Calculated Hourly Payment For Indirect Employees
Hot Mill	Ass't. Roller	$3.099	$.021	45%	$.009
54" Tandem Mill	Roller	3.501	-.007	5	.000
Skin Mills	Roller	2.965	.032	10	.003
Annealing	Loco. Tractor Oper.	2.362	.020	5	.001
#1 Cont. Pickler	Recoiler Oper.	2.429	.025	5	.001
					$.014
					x .67
					$.009

EXHIBIT 4

Supplemental Affidavit of Rae Williamson in Support of Motions for Summary Judgment.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

LAWRENCE RALPH and [illegible] OTHERS,

Plaintiffs,

-vs-

THE BETHLEHEM STEEL CORPORATION and THE UNITED STEELWORKERS OF AMERICA,

Defendants.

STATE OF NEW YORK)
) ss:
COUNTY OF ERIE)

RAE WILLIAMSON, being duly sworn, deposes and says:

It has been suggested by counsel for the plaintiffs that the test period utilized by the Company in the structuring of the incentive plan for the electrical and mechanical maintenance workers was unfair. In response to this claim, I would like to explain the manner in which the test period was designated and assure the Court that the period used was not chosen to bring about an advantage or disadvantage to anyone.

Whereas Section 5(d) of the 1956 Supplemental Agreement provides that "the past representative test period shall be the period of three months next preceding the date on which an existing plan shall be replaced by a new incentive plan", the contract also provides that the period may be a different period in the event of special circumstances.

In the case of the indirect employees, the new incentive plan was put into effect on April 17, 1960 and the three months immediately preceding that date would, of course, have fallen during the months of January, February, March and April of 1960. The

representative test period used was the 13 weeks which ran from July 5, 1959 through January 30, 1960, excluding the weeks ending July 18, 1959 through November 7, 1959, during which time the Lackawanna Plant was closed because of a labor dispute. The same period was used for the direct Continuous Picklers Plan and a major portion of the period was also used for the direct plan for the Skin Mills.

I want to stress two points in respect to the representative test period:

1. It is practically impossible for the Company to use the period of three months immediately preceding the institution of a new plan as a test period. Generally a period of 30 to 90 days is required between the termination of the representative test period and the date on which the new plan goes into effect in order for the Company to compute the figures needed to meet the test period earnings comparison requirement.

2. The Company did not select the particular representative test period which was used in the implementation of the subject plan in order to bring about an advantage or disadvantage to any of the parties, and, as far as deponent can determine, there is no basis for believing that the representative test period which was used in any way prejudiced the indirect employees.

It should be borne in mind that in 1959 and 1960, when the Lackawanna Plant was implementing changes in the incentive plans in the Strip Mill, the Industrial Engineering Department had embarked on a program of restructuring hundredsof incentive plans throughout the Lackawanna Plant, as part of its obligation under the 1956 Supplemental Agreement. It was at that time endeavoring to put into operation at least one new incentive plan each month.

Its personnel were heavily burdened in order to maintain this schedule, and even if the Department were to continue at that rate, it would consume many years to complete the restructuring of all of the plans in the Plant. It was natural that management should undertake first to establish standards for the direct plans and after these had been completed, it would undertake the changes in any indirect plans paid off direct plans.

When development of a new plan is begun, the Industrial Engineering Department first develops the standard minutes for each basic task or work element normally encountered in the operations of a direct plan unit. When these standards have been developed, the latest available production records indicating the work performed on each unit for 13 weeks are accumulated and used for the representative test period. The standards must then be applied to each rated task or production element on every turn on every unit affected by the plan and the percent performance of each such unit for each turn during the entire thirteen weeks must be calculated. These percent performances must then be summarized and converted into hourly earnings for each job involved in the incentive plan. In a plan like the one for the indirect employees, involving as it did 12 individual operating units, many hundreds of man hours would be involved in the preparation of this data by the Industrial Engineering Department.

Once the new plan earnings during the test period have been calculated for each job, they must then be compared to the earnings actually paid each job during the same 13 week period under the "old plan". This is necessary to determine whether an IA is necessary and if so how much. An IA results when hourly earnings

under the old plan during the test period are greater than the hourly earnings which would have been paid during the test period under the new plan, and represents the difference between these two figures. After all these calculations have been completed by the Industrial Engineering Department at the Lackawanna Plant, the results are incorporated in an incentive plan brochure which must be forwarded to the Company home office in Bethlehem, Pennsylvania for approval. If it is approved there, the Company meets with Union representatives to present the plan and explain it to them. It is then put into effect at the beginning of the following pay period.

Since all of the above work must be performed by the Industrial Engineering Department after production has been completed for the 13 week test period, it is obvious that the plan cannot go into effect immediately at the conclusion of the test period. The foregoing procedure for development of standards, testing against the test period and installation of new plans was an on-going process, ultimately involving hundreds of incentive plans throughout the Lackawanna plant. In the course of this procedure, determination of the test period was a necessary detail to the implementation of a plan, but one routinely handled by the Department. Normally, when all development work on the new plan is completed and all standards developed, the Company merely takes the most recent 13 weeks for which records are available for use as a test period. In this case the Company did not select a particular 13 week period which it deemed most favorable to it, nor did it select more than one 13 week period for purposes of comparison. Obviously, to do so would increase the volume of work which was already substantial.

There was no effort to use a test period favorable to the

Company or unfavorable to the employees. The fact that this test period spanned the period of a strike shutdown was not significant nor unusual. The test period used for the indirect employees was the same as that used for the Continuous Picklers. I recall that the Continuous Picklers had one of the more complicated incentive plans within the Strip Mill because it involved three units, a wide variety of products, and many work elements. Since the Industrial Engineering Department had made all the necessary calculations for all of the turns on the Continuous Picklers during their representative test period, it would have saved considerable man hours and effort to use the same period for the indirect plan. The computations for the Continuous Picklers, at least, would not have to be repeated for a different production period.

I also note that the period between November 8,, 1959 and February 6, 1960, was the test period selected for the Skin Mills. It is therefore apparent that portions of the test period used for the electrical and mechanical workers were used for other direct production units.

It has been suggested that the test period was in some manner unfair or prejudicial to the rights of the employees affected and that it was not representative of the operations in the Strip Mill. In my opinion, this is not correct. I have reviewed certain average quarterly earnings figures which were presented to the Union at the time that the question of the representative test period was being discussed in Grievance B-3139. (Minutes, third step meeting 5/1/61, Cummings affidavit, Exhibit 5) The test period average earnings for the Millwright's position were $3.261 per hour. In the minutes of Grievance B-3139, there is set forth the average hourly earnings by quarter, for the 12 quarters (3 years) preceding

the institution of the plan, adjusted to the same standard hourly wage rate level used during the test period. For the Millwrights, these figures vary from a low of $3.134 to a high of $3.394 and average $3.237. In my opinion, these figures confirm that the test period used by the Company was representative.

It has also been argued that because of the period selected, which included one week immediately preceding a strike and twelve weeks which followed a strike, that these were weeks of extremely high production and thus, constituted an unrepresentative test period. In response to this question, I have reviewed the monthly production figures for the Hot Mill Proper during late 1959 and early 1960. During the months of July, November and December, 1959 and January, 1960, the weighted average tons per hour was 307 tons. During the first four months of 1960, the Hot Mill Proper was producing at the weighted average tons per hour of 315 tons. Based on these figures the production during the representative test period was comparable to, but somewhat less than the production during the months immediately preceding the institution of the plan.

Whereas it would be impossible to generalize as to total production in the Strip Mill, it is generally accepted that the Hot Mill Proper, as the input side of the Strip Mill, generally reflects its total operation. Moreover, the Hot Mill's weighted contribution to the indirect plan is 45%.

Another rough index as to whether production is up or down, is the variation in the earnings of the employees in the Strip Mill. It is significant that during the representative test period, the average hourly earnings of a Millwright were $3.261. During the first quarter of 1960, the average hourly earnings were $3.286.

Supplemental Affidavit of Rae Williamson in Support of Motions for Summary Judgment.

(Third step minutes, Exhibit 5) Whereas the hourly output figures are quite comparable, to the extent that there is a difference, it would be consistent with the increased production for the first few months of 1960, reflected in the production figures heretofore set forth for the Hot Mill Proper.

The foregoing figures would negate the assertion made by plaintiff's counsel that production was particularly high during the test period. They corroborate the assertion that operations during the test period were very comparable to operations during the three months immediately preceding the implementation of the incentive plan. An analysis of the data, which was presented to the Union in the prosecution of Grievance No. B-3139, supports the reasonableness of the Union's action in withdrawing the representative test period issue at the fourth step level.

Rae Williamson
Rae Williamson

Sworn to before me this
3rd day of April, 1973.

Frederick F. Zak

FREDERICK F. ZAK
Notary Public, State of New York
Qualified in Erie County
My Commission Expires March 30, 19 7/

Defendant Steelworkers' Motion for Summary Judgment.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

LAWRENCE RALPH and DIVERS OTHERS, Plaintiffs,	:	
v.	:	CIVIL ACTION NO. 11,892
THE BETHLEHEM STEEL CORPORATION AND THE UNITED STEELWORKERS OF AMERICA Defendants	:	

Defendant Steelworkers' Motion
For Summary Judgment

Pursuant to Rule 56(c), Fed. R. Civ. Proc., defendant Steelworkers hereby moves for summary judgment on the grounds that there is no genuine issue as to any material fact and that the movant is entitled to a judgment as a matter of law.

Respectfully submitted,

George H. Cohen

George H. Cohen, Esq.
Michael H. Gottesman, Esq.
Bredhoff, Barr, Gottesman, Cohen & Peer
1000 Connecticut Avenue N. W.
Washington, D. C. 20036

Thomas Krug, Esq.
155 Franklin Street
Buffalo, New York 14202

Attorneys for United Steelworkers of America, AFL-CIO

OF COUNSEL
Bernard Kleiman, Esq.
10 South LaSalle Street
Chicago, Illinois 60603

Affidavit of William J. Theis in Support of Defendant Steelworkers' Motion for Summary Judgment.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

LAWRENCE RALPH and DIVERS OTHERS,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	Civil Action No.
	)	11,892
THE BETHLEHEM STEEL CORPORATION and	)	
THE UNITED STEELWORKERS OF AMERICA,	)	
	)	
Defendants.	)	
	)	

AFFIDAVIT OF WILLIAM J. THEIS IN SUPPORT OF DEFENDANT STEELWORKERS' MOTION FOR SUMMARY JUDGMENT

City of Allentown)
County of Lehigh) ss

William J. Theis, being duly sworn, deposes and says:

1. My name is William J. Theis. I reside at 1330 Wahneta Street, Allentown, Pennsylvania, 18103

2. I retired from the staff of the United Steelworkers of America ("Steelworkers" or International Union) on October 1, 1970 after approximately twenty-seven (27) years of service for the International Union.

3. My initial contact with the Steelworkers took place when I was employed first as a helper and thereafter promoted to a motor inspector (electrician) at the Clairton, Pa. plant of the United States Steel Corporation in the late 1930's and early 1940's. The Steelworkers was the bargaining agent of the production and maintenance employees in that plant. I became an active union member, and in 1941 I was elected President of the local chartered to represent those employees (i.e., Local 1557).

4. In 1943 I was offered and accepted a job as a staff representative for the Steelworkers International Union. I was assigned to the staff of

District Director Newell (District No. 9) in Bethlehem, Pennsylvania. From 1943 until about 1950-51, I serviced numerous local unions whose memberships were made up of production and maintenance employees working in various plants of the Bethlehem Steel Corporation located in the geographic area in and around Bethlehem, Pa. Among my major functions, when local union and local plant management representatives were not able to resolve satisfactorily any "grievance" (a dispute relating to the meaning, interpretation, or application of the collective bargaining agreement in effect between the Bethlehem Steel Corporation and the Steelworkers), I was responsible for representing the International Union in all 4th step grievances. Further, for those grievances not resolved satisfactorily in the 4th step, I was responsible for the handling of the Union's presentation to the arbitrator who had authority to issue final and binding awards. In this capacity I was required to become familiar with and knowledgeable about the comprehensive collective bargaining agreements which were in effect during those years.

5. In addition, during this period, from approximately 1947-1950, I was assigned another specific area of responsibility by the International Union--I was appointed Union Chairman of the Bethlehem Steel Corporation Wage Rate Inequity Committee. My counterpart, Mr. Fenninger, is presently a Vice-President of Bethlehem. This joint committee, composed of an equal number of Bethlehem and Steelworker representatives, was charged with the major task of implementing the so-called CWS manual ("Job Description and Classification Manual") which had been agreed to by the parties years previously. The purpose of this manual was to classify all jobs in the basic steel industry according to certain objective criteria and to establish standardized rates of pay for all employees in the industry

who performed similar jobs irrespective of where the plant was located and which steel company was the employer.

In carrying out our task, the joint committee travelled to numerous Bethlehem plants located throughout the United States (where the Steelworkers was the bargaining agent), observed and studied job content and functions and attempted to eliminate the numerous wage rate inequities which then existed either on an "inter" or "intra" plant basis within the Bethlehem system. Of course, in accomplishing this huge task the joint committee,which included some Industrial Engineers, was assisted by the local union and plant management representatives at each particular plant.

6. Commencing in 1950-1951, the Steelworkers and Bethlehem established the position of Permanent Umpire whereby one person was retained jointly by the parties for a specified term during which he was empowered to hear and determine all contract interpretation disputes submitted to arbitration. Simultaneous with this development, I was assigned by the International Union to the newly created position of coordinator. In this capacity, I maintained an office in Bethlehem, Pa. where I was responsible for serving as the Steelworkers "liason" man with the Permanent Umpire and a Bethlehem representative. I participated in scheduling arbitration hearings, disseminating information to all Steelworker locals within the Bethlehem system to keep them up to date concerning the Umpire's recent awards, and handled and presented many arbitration cases to the Umpire on behalf of the Steelworkers.

7. In addition to my "coordinator" functions (which I described above), because of my prior participation on the Wage Rate Inequity Committee, from 1950-55 I was actively involved in advising and representing numerous local unions in handling and processing grievances filed to

challenge the job classifications put into effect at Bethlehem at the culmination of the job evaluations. On the basis of statistical data which was compiled by Steelworker technicians in the Pittsburgh, Pa. headquarters the Union concluded that as of 1956 the average hourly earnings of Bethlehem employees it represented had fallen below that of other major steel companies. The Union believed that in large measure this reflected the fact that the incentives paid by Bethlehem were not uniform and too low.

Accordingly, at the behest of the Steelworkers, a series of top level negotiating sessions was conducted in New York City at which the Union was represented by President David McDonald, Arthur J. Goldberg, General Counsel, Ben Fischer of the Pittsburgh office, who was expert in this area, and myself. Bethlehem was represented by J. Larkin, Vice President, counsel John Morse and other high level officials.

8. These negotiations culminated successfully in the execution on May 25, 1956 of a "Supplemental Agreement" (see Exhibit "A") to the then existing 1954 Main Agreement. The Supplemental Agreement on incentives, which was applicable to all the employees represented by the Steelworkers throughout the Bethlehem Corporation, contained several key provisions:

(1) All the incentive plans which had been established previously were to be replaced by management with new incentive plans under which the incentive base rates were to be the applicable standard hourly wage rates (Section 5(a));

(2) Section 5(b) provided: "...where an existing incentive plan shall be replaced with a new incentive plan...the new incentive plan...shall meet the requirement that, over a past representative test period, the average hourly earnings of all employees assigned to a job under such a new plan would not have been less under such a new plan than (continued on page 5)

the average hourly earnings received by all the employees assigned to that job during such period under the incentive plan which it replaced."

(3) Consistent with customary managerial prerogatives, Bethlehem was authorized to establish and implement such new incentive plans. The review and replacement by the management of incentive plans which complied with the Supplemental Agreement was to be commenced promptly and continued until all of the company's incentive plans were revised accordingly (Section 5(f)). This reflected the parties recognition that the Supplemental Agreement entailed an enormous undertaking which was destined to take a considerable period of time to complete.

(4) The Union had the right to file grievances insofar as the new incentives did not meet the standards contained in the Supplemental Agreement; and, further, the parties agreed to "appoint a joint committee to review such grievanceswhich ha[d] not been disposed of in step No. 4 of the grievance procedure" (Section 5(e)).

9. This procedure for referring incentive grievances to a special committee of Bethlehem and Steelworker representatives experienced in this problem area became known by the parties as the "4 1/2 step". It resulted from the joint recognition of the parties that the subject matter of incentive grievances frequently was so complex and technical that the parties at the local level, often less familiar with such intricacies, were not able adequately to evaluate the merits of such grievances. The "4 1/2 step" was intended to give the technicians on both sides an opportunity to look at each incentive grievance filed by local unions throughout the Bethlehem corporation within the context of the overall Supplemental Agreement and to evaluate it with a view either to making a settlement, withdrawing it, or processing it to arbitration depending upon their judgment of what was warranted in the particular circumstances present.

The "4 1/2 step" also afforded a centralized mechanism whereby the Steelworkers could avoid "overloading" the arbitral process, for example, by selecting one among numerous individual grievances which presented a common issue and submitting only that one to arbitration, provided that it would govern the outcome of all such similar grievances.

10. Shortly after the Supplemental Agreement was executed on May 25, 1956 the International Union appointed three persons to serve as its representatives on the Joint Incentive Committee. Those appointed were: Bill Jacko, Chairman; I was named Secretary; and George Frey, member. Of the three, I was the only one who did not have any formal industrial engineering training and background. To the best of my knowledge George Frey retired from the Steelworker staff in 1970 and Bill Jacko is no longer alive.

I participated in the Joint Incentive Committee from its inception until my retirement from the Steelworkers staff in October 1970. However, I think it would be fair to say that the height of the Committees' activity took place during the ten (10) year period commencing immediately after it was established in 1956.

11. In my capacity as Union representative on the Joint Incentive Committee I engaged in a variety of activities, including: (1) participating along with other International officials such as Ben Fischer, presently director of the Contract Administration Department, and Bill Jacko in an extensive series of informational meetings attended by staff representatives who serviced local unions at Bethlehem plants located throughout the country and the key local union grievance committeemen at such plants for the purpose of explaining the contents of the 1956 Supplemental Agreement on incentives and how it would be administered; (2) participating along with Bethlehem representatives on the Joint Incentive Committee in discussions

with local union officials, rank and file employees directly affected, and local plant management to explain the operation of the new incentives established pursuant to the 1956 Supplemental Agreement; and (3) carrying out my responsibilities in "4 1/2 step" meetings with the overall Joint Incentive Committee normally conducted at the corporate headquarters in Bethlehem, Pa.

I devoted a substantial amount of time and effort, along with my colleagues Bill Jacko and George Frey, to our "4 1/2 step" duties. As might have been expected, as management established a large number of new incentive plans in each of its plants the local unions responded by filing a substantial number of grievances challenging these new incentives. While many such grievances were resolved informally in the initial four steps of the grievance-arbitration procedure, a substantial number were processed to the Joint Incentive Committee at the "4 1/2 step" level.

Consequently, on a regular basis throughout our tenure as Union representatives on that Committee, Bill Jacko, George Frey and I were called upon to exercise our discretion and judgment in dealing with our management counterparts as to whether it was in the best interests of the employees at the plant level and the overall effectiveness of the grievance-arbitration procedure to attempt to negotiate a voluntary resolution of the grievance, to submit the grievance to final and binding arbitration by the Permanent Umpire, or to withdraw the grievance for lack of merit.

Quite naturally, in carrying out our responsibilities on behalf of the Union there were occasions when we decided to pursue each of these courses of action depending upon the particular circumstances.

12. Initially, as the first round of incentive grievances reached the "4 1/2 step" after the Company, pursuant to the Supplemental Agreement, established new incentive rates at various plants throughout the country,

the Union members of the Joint Incentive Committee analyzed the basis of each such grievance. Then, we selected a representative cross section of those which raised fundamental and major issues of contract interpretation and submitted them to arbitration for the decision of a neutral expert.

This resulted in a full scale hearing which I attended before Umpire Ralph Seward in New York City in which Mr. Ben Fischer, one of the International Union's most experienced technicians, presented the Steelworkers case covering about 15 grievances. On February 25, 1959 Umpire Seward issued a comprehensive twenty-three (23) page written award which in large measure rejected a variety of arguments urged by the Union in an effort to require the Company to correct alleged defects in its newly established incentive plans and to obtain retroactive adjustment in earnings for affected employees.

I have recently had occasion to reexamine Umpire Sewards' Award (Attached as Exhibit "B"). In essence, the Steelworkers contended that the new incentives were improper because: (1) they did not provide "equitable compensation" to the affected employees; (2) they did not provide an adequate rate of participation for so-called "indirect workers" (i.e., workers who did not directly determine the amount of output or production of a particular machine (e.g.); and (3) they were partly based upon estimates of "maximum possible output" which were unfair and unrealistic.

The Umpire rejected these claims. He reasoned as follows:

> The Umpire gathers that as to all such grievances the Company's position has been the same as that outlined above; i.e., that the sole contractual issue that could properly be raised by such a grievance was whether or not the new standard-hourly-wage-rate-based incentive plans conformed to the requirements of Section 5(b) of the May 25th Agreement and that all other issues were irrelevant. The selected cases have been brought to the Umpire, essentially, as a means of testing the validity of the Company's position. It is this general question, therefore, that must first be answered.

Affidavit of William J. Theis in Support of Defendant Steelworkers' Motion for Summary Judgment.

The Umpire will state his answer immediately. He finds that as to any straight incentive replacement under the May 25th Agreement -- i.e., where the Company does not incorporate in the new incentive plan adjustments then being made to offset technological changes -- the Company's position is correct. In such a case the sole standard which the Company must meet as a matter of contract obligation is that set forth in Section 5(b). On the other hand, whenever the Company does incorporate in one of its new standard-hourly-wage-rate-based incentive plans adjustments then being made to offset technological changes, the standards which the new incentive plan must meet are those set forth in Article V, Section 2(c) of the Main Agreement...

"...when a grievance reaches the Umpire claiming that a new incentive, established pursuant to Section 5(a) of the May 25th Agreement, does not meet the requirements of that Agreement, the Umpire must determine whether the new plan is governed by Section 5(b) or Section 5(c). If Section 5(b) applies, the only inquiry permitted him is into the question of whether the plan meets the test of comparative earnings during the "past representative test period," provided in that section. If Section 5(c) applies, on the other hand, his inquiry must be into the question of whether the new plan meets the requirements of Article V, Section 2(c), of the Main Agreement; i.e., the requirements that:

> "...Such new incentive shall be based upon the applicable standard hourly wage rate and shall, giving due effect to the change or other event by reason of which the new incentive shall have been established, be designed to provide compensation at least equal to the compensation that would have been provided under the incentive which it replaced and shall provide equitable compensation." (Emphasis added.)

The differences between the two standards are apparent. Section 2(c) of the Main Agreement has to do with the adjustment or replacement of incentives as a result of technological changes in the operations to which they apply. In a case arising under this section, the Umpire would have to determine whether or not the new incentive, "giving due effect" to the technological changes, was designed to provide earnings at least equal to those that would have been provided by the old plan. Such a determination could properly involve a comparison of potential earnings from the two plans under many different circumstances, at many different periods, and at many different levels of production. Further-- and quite apart from this potential earnings comparison -- the Umpire would have to determine whether the new plan provided "equitable (continued on page 10)

compensation." In a "2(c) case," therefore, any or all of the claims made by the Union in the present grievances might well be pertinent as involving either the comparison of potential earnings or the question of whether the compensation provided by the new plan was, under all the circumstances, "equitable."

The standard which the parties set forth in Section 5(b) of the May 25th Agreement is far more limited. Raising incentive base rates to the level of the standard hourly wage rates would necessarily alter the pre-existing relationships between production, incentive earnings and the minimum guarantee. Earnings under the new plans, in most cases, would rise more sharply with increases in production (and fall more sharply with decreases) than had been true under the old plans. In most cases, also, the level at which employees would begin to "make out"--i.e., to receive incentive earnings over and above their standard hourly wage rates--would be different. Faced with this situation, the parties provided in Section 5(b) that earnings under the new plan must at least equal earnings under the old plan at the production level achieved during a "past representative test period." In Section 5(d) they defined the term "past representative test period" as meaning, in the absence of special circumstances, the period of three months next preceding the date on which the new plan replaced the old. If--as applied to the actual production achieved during this "test period"--the new plan would have produced earnings at least equal to those which the old plan did produce, the new plan meets the standard of Section 5(b).

This is the sole standard set forth in that section. The fact that in periods of increased or decreased production--i.e., periods in which production exceeds or falls below the levels achieved during the "past representative test period"--earnings under the new plan may not be the same as under the old is clearly irrelevant in applying this standard. (Emphasis added.)

13. Umpire Seward's award was read and analyzed by the Union members of the Joint incentive Committee and discussed with other top level advisors and technicians; we were all aware that the award was final and binding on all parties. In our judgment the clear teaching of this decision was that in the future we would have only a narrow, limited basis for challenging in arbitration any new incentive plans established by management under Section 5(b) of the 1956 Supplemental Agreement.

14. I have been advised that the subject matter of this lawsuit relates to two grievances (Nos. B-3139 and B-3141) filed by Local Union 2604 challenging the incentives established by management on April 17, 1960 for the mechanical and electrical maintenance employees in the Continuous Sheet, Strip and Plate Mills Division of Bethlehem's Lackawanna, New York plant.

To refresh my recollection concerning my participation in this matter, I recently reread the June 3, 1964 Minutes of the Joint Incentive Committee which convened at Bethlehem, Pa., to discuss, among other things, those two grievances (B-3139 and B-3141). The Minutes are attached (Exhibit "C").

They reflect that myself and the other Union members of the Committee, after studying and analyzing the files for these grievances, made the judgment to agree with the management representatives that there was no basis for submitting the cases to arbitration since there were "no remaining open issues".

15. For the convenience of the Court, I shall quote below the Minutes of the Committee meeting relevant to the grievances in question and then provide explanatory comments on a sentence by sentence basis:

> The Committee noted that Article V, Section 2(c) of the Agreement dated January 4, 1960, cited in the Union's brief does not apply to these grievances because, as indicated under "The Issue" in that brief, the incentives in question were established pursuant to Section 5(b) of the May 25th Agreement. The Committee also noted that the Local Union withdrew the issues relating to the past representative test period and the designation of the incentives as indirect at the arbitration hearing on November 27, 1962. The statement of the Company representative at the Step No. 4 meeting in October, 1963, in respect of these grievances that any adjustments which may be made in incentives which serve as components of the incentives involved here will also apply to these incentives confirms the established policy of the Company which the Committee has understood and agreed to. That policy precludes the existence of any

issue in these grievances relating to component incentives as to which there are unresolved grievances.

Accordingly, the Committee finds that there are no remaining open issues in these grievances.

First, the Committee's reference to Article V, Section 2(c) as not being applicable to these grievances under 5(b) simply reflects a recognition by the Union members on the Committee that Umpire Seward's February 25, 1959 award meant what it said--that is, the Union could not attack the validity of new incentive rates established pursuant to Section 5(b) of the 1956 Supplemental Agreement by claiming that they failed to provide "equitable compensation" since the latter standard is relevant only to Section 2(c), not 5(b) situations. Precisely because of the Seward award it was the unanimous judgment of my colleagues and myself that it would be futile to try to raise this same issue again in arbitration.

Second, it appears that the local Union, through its grievance committeemen, had previously withdrawn its claim that the mechanical and electrical maintenance employees involved were "direct" rather than "indirect" workers and therefore their incentive plan was improper because they were paid at a lower incentive rate than paid to direct workers. In the judgment of the Union members of the Committee, the Local Union acted reasonably in withdrawing this claim for at least two reasons: (1) The term "direct workers" refers to employees, such as operators of machinery and equipment, whose jobs directly affect the rate of production or output. By contrast, the mechanical and electrical maintenance employees were engaged essentially in repairing and servicing machinery and equipment. As such they are only "indirect" workers because their jobs do not directly affect the rate of output; and (2) insofar as the new incentive plans established by management under Section 5(b) provided lower rates for indirect workers than applicable to direct workers, the Union could not rely on this in arbitration since Umpire Seward held in his 1959 Award that he was "without

power to hold these incentive plans invalid" on the basis of any [such] claim" (See Exhibit "B" at p. 14).

Third, the Local Union had previously withdrawn its claim that the three month test period used by management (i.e., July 5-15, 1959 and November 15, 1959 - January 30, 1960) was not a "representative test period" within the meaning of Section 5(b) of the Supplemental Agreement because it covered a split period of several weeks before the famous 1959 basic steel strike and then ten-eleven weeks after the 116 day strike ended.

Under Section 5(b) where a new incentive plan replaces an existing plan the new plan must meet the requirement that over a past representative three month test period the average hourly earnings of all employees assigned to a job under the new plan would not have been less than the average hourly earnings actually received by the employees on the job under the old incentive plan.

In view of the fact that the Minutes state that the Local Union had previously withdrawn its challenge to the test period used by management, it was assumed that this matter had been resolved satisfactorily to the Union. I do not believe that the Union members of the Committee reexamined that issue at the June 2, 1964 "4 1/2 step " meeting. In my judgment, however, to have a meritorious challenge would require a demonstration that the period selected by management was "abnormal" and therefore not truly representative. And to the best of my knowledge, I have never been made aware of any information establishing that this particular period would have been"abnormal".

Fourth, since the new incentive plan for electrical and mechanical maintenance employees was an indirect incentive it was based on the incentive performance of operating employees who worked in seven (7) units which contributed to the indirect incentives. Those seven contributing units were the hot mill proper, hot mill shipping, continuous picklers, tandem mills, skin mills numbers 2, 3 and 5, annealing and cold mill shipping. The Union had filed numerous grievances seeking adjustments in the new incentive rates for those contributing units and at a Step 4 meeting in October 1963 relating to such grievances the Company represented that any adjustments which might be made in incentives which serve as components of the incentives for the electrical and mechanical maintenance employees would also apply to them.

In my judgment, this insured that the grievants covered by B-3139 and B-3141 were adequately protected insofar as being entitled thereafter to any retroactive back pay and/or prospective increase in their incentive rates.

16. In making the judgment that there were no issues open in Grievances B-3139 and 3141 which warranted submitting them to arbitration, myself and the other Union members of the Joint Incentive Committee had only one purpose in mind--to carry out our responsibilities fairly, reasonably and honestly. This was the manner in which we approached all the decisions we were called upon to make at the "4 1/2 step."

I was recently shown a list of several hundred plaintiffs in this case who were employed as electrical and mechanical maintenance workers at the Lackawanna plant. I was only able to recognize a few names and, to the best of my knowledge, I did not have a personal relationship with more than a handful of them.

I was not motivated by any personal hostility or animosity to any of the grievants in exercising my discretion at the "4 1/2 step". Nor did I have any desire to treat those grievants in any way differently from any other grievants involved in other cases submitted to the "4 1/2 step".

17. I have been advised that subsequent to the 4 1/2 step decision not to process Grievances B-3139 and 3141 to arbitration, the Local Union nonetheless decided it was going to do so. This is a very unusual occurrence since it is a well understood principle that once a grievance reaches the level of International Union involvement (usually commencing at the 4th step) the staff representatives responsible at that level have the authority and discretion to make a final decision as to whether the grievance is settled, withdrawn, or processed to arbitration. The procedure and practice followed at the Lackawanna plant was an exception to this general practice; at Lackawanna there had been a long-standing tradition of the Local Union retaining the power to decide whether or not to go to arbitration even after the International Union became involved in the grievance.

18. On November 14, 1964, Umpire Ralph Seward conducted a hearing with respect to the grievances in question. I did not participate in that hearing; thereafter, on July 12, 1965, Seward issued his award.* After analyzing the case, he agreed with the prior conclusion of the Joint Incentive Committee (June 1964) that there were no remaining open issues and thus the grievances were dismissed. In addition, the Umpire commented that th re was no merit to the Union's claim raised at the early stages of the grievance proceeding that the Supplemental Agreement was violated because the actual earnings of the electrical and mechanical

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*Attached as Exhibit "D".

maintenance employees under the new incentives had fallen below the earnings levels established during the test period.

William J. Theis

William J. Theis

Subscribed to and sworn to before me on this 17th day of July 1972.

Helen A. Ko

Notary Public

NOTARY PUBLIC
BETHLEHEM, NORTHAMPTON COUNTY, PA.
MY COMMISSION EXPIRES NOV. 29, 1975

Exhibit "A" Attached to Affidavit of William J. Theis.

APPENDIX 3

SUPPLEMENTAL AGREEMENT dated May 25, 1956, between BETHLEHEM STEEL COMPANY and UNITED STEELWORKERS OF AMERICA.

The parties hereto agree as follows:

Section 1. Except as otherwise expressly provided herein, the terms used herein have the same meaning as they have in the agreement dated July 1, 1954, as amended, between the parties hereto, and any agreement which shall succeed such agreement. Such agreement is hereinafter referred to as the Main Agreement.

Section 2. Effective beginning June 4, 1956, the hourly earnings of each Employee whose job shall be paid on an incentive basis, for each hour for which he is paid incentive earnings, shall be increased by an amount obtained by multiplying the standard hourly wage rate in effect for such job on the date of this Agreement by an Adjustment Factor in the amount shown in the following table opposite the applicable percentage by which the average hourly earnings (not including overtime compensation or shift premiums) of all the

Employees on the particular job for the hours worked by them on an incentive basis during the pay periods closed in the calendar quarter ended March 31, 1956, exceeded the standard hourly wage rate applicable during those periods to such job:

Percentage by Which Earnings in First Quarter of 1956 Exceeded Standard Hourly Wage Rate	*Adjustment Factor*
Over 0% and under 10%	5%
10% to 14.9%	4%
15% to 19.9%	3%
20% to 24.9%	2%
25% to 29.9%	1%
30% and over	0%

Section 3. In the event of an increase in the standard hourly wage rates after the date of this Agreement, the agreement which shall succeed the Main Agreement now in effect shall not contain the provision now contained in Section 1(*b*) of Article IV, but the hourly earnings (not including overtime compensation or shift premiums, but including the Adjustment Factor provided for in Section 2 of this Agreement) of each Employee whose job shall be paid on an incentive basis, for each hour for which he shall be paid incentive

earnings, shall be increased by the percentage by which the standard hourly wage rate for his job resulting from such increase exceeds the standard hourly wage rate which is in effect for such job on the date of this Agreement.

Section 4. The incentive compensation for a particular job shall no longer be computed in accordance with the provisions of Section 2 and Section 3 of this Agreement after the incentive base rate for such job shall be the standard hourly wage rate applicable to such job.

Section 5. (*a*) Notwithstanding the provisions of Article V of the Main Agreement as amended by this Agreement, the Management shall review each existing incentive plan the incentive base rates under which are not the applicable standard hourly wage rates and shall replace such plan with a new incentive plan the incentive base rates under which are the applicable standard hourly wage rates then in effect, in accordance with the procedure set forth in this Section.

(*b*) Except as otherwise provided in this Section, where an existing incentive plan shall be replaced with a new incentive plan in

accordance with the provisions of this Section, the new incentive plan (including all guarantees, allowances and payments in connection with such plan) shall meet the requirement that, over a past representative test period, the average hourly earnings of all the Employees assigned to a job under such new plan would not have been less under such new plan than the average hourly earnings received by all the Employees assigned to that job during such period under the incentive plan which it replaced.

(c) Where the Management incorporates in a new incentive plan established in accordance with the provisions of this Section adjustments then being made by reason of any of the changes or other events specified in Section 2 (c) of Article V of the Main Agreement as amended by this Agreement, such new plan (including all guarantees, allowances and payments in connection with such plan) shall meet the requirements set forth in such Section 2 (c).

(d) As used in this Section 5, the term "average hourly earnings" means the average hourly earnings (not including overtime com-

pensation or shift premiums, but including the adjustments provided for in Section 2 and Section 3 of this Agreement) for all hours worked on an incentive basis; and the term "past representative test period" means, in the absence of special circumstances, the period of three months next preceding the date on which an existing incentive plan shall be replaced by a new incentive plan in accordance with the provisions of this Section.

(e) Each new incentive plan established in accordance with the provisions of this Section shall be put into effect in accordance with the procedure set forth in subparagraphs (1), (2) and (3) of Section 2 (d) of Article V of the Main Agreement as amended by this Agreement. If such new plan shall become the subject of a grievance, the grievance shall be determined in accordance with the principles set forth in this Section. The Company and the Union will appoint a joint committee to review such grievances which have not been disposed of in Step No. 4 of the grievance procedure.

(f) The review and replacement by the Management of incentive plans in accordance

with this Section shall be commenced promptly after the date of this Agreement and shall be continued until all of the Company's incentive plans shall have been revised in accordance with the provisions of this Section. The Management at each Plant will from time to time advise the Union there concerning the progress of the program.

Section 6. Effective beginning June 4, 1956, the paragraphs numbered (*1*) and (*2*) of Section 1 of Article IV of the Main Agreement are eliminated and Article V of the Main Agreement is amended to read as set forth in full in the appendix to this Agreement.*

Section 7. If prior to the time when an existing incentive plan shall be replaced with a new incentive plan under the provisions of Section 5 of this Agreement an existing incentive wage rate shall be adjusted under the provisions of Article V of the Main Agreement, the adjustment shall be made in accordance with the provisions of that Article prior to its amendment by this Agreement.

*Such Article was incorporated as Article V (Job Classifications and Incentives) in the August 5, 1956, Main Agreement.

Section 8. This Agreement shall continue in effect until June 30, 1962.

BETHLEHEM STEEL COMPANY

by

J. M. Larkin
Vice-President

UNITED STEELWORKERS OF AMERICA

by

David J. McDonald
President

Exhibit "B" Attached to Affidavit of William J. Theis.

IMPARTIAL UMPIRE

DECISION NO. 520

February 25, 1959

In the Matter of	) Bethlehem Plant 13754, 13992 and 13993
	) Johnstown Plant A-1100
BETHLEHEM STEEL COMPANY	) Lackawanna Plant 9600
	) Lebanon Plant 2687, 2922 and 2990
and	) Pottstown Works A-1671
	) Sparrows Point Plant 4425-9962, 4426-9024, [illegible] and 4449-9963
UNITED STEELWORKERS OF AMERICA	)

Pursuant to its obligations under Section 5(a) of the Supplemental Agreement of May 25, 1956 -- commonly referred to as the "May 25th Agreement" -- the Company has replaced many of its non-standard-hourly-wage-rate-based incentive plans with new plans in which the applicable standard hourly wage rates serve as the incentive base rates. These grievances have been filed in protest against certain of the new plans. The grounds of protest differ from case to case. They include, however, claims of the following principal types:

1. That a new plan is improper because it does not provide earnings opportunity comparable to that provided by the old plan for equivalent effort or production;

Exhibit "B" Attached to Affidavit of William J. Theis.

2. That a new plan is improper because it provides an inadequate rate of participation for so-called "indirect workers"; and

3. That a new plan is improper because it is based, in part, upon estimates of "maximum possible output," which are unrealistic, unfair and rarely -- if ever -- attainable.

One or more of these three claims is made in each of the grievances, amplified in each case, of course, by detailed references to the operation of the particular plans involved. In each case, the Union claims that the defects in the plan or plans in question are such as to constitute a violation of the May 25th Agreement. It asks that the defects be corrected with due compensation for earnings lost by the affected employees.

During the hearing, certain special claims, raised in two of the grievances, were either settled (the minimum daily guarantee issue raised in Johnstown Grievance No. A-1100) or referred back to Step No. 3 (the fuel-factor allowance problem in the Sparrows Point grievances). In addition, two of the Lebanon grievances -- Nos. 2887 and 2922 -- were referred back to Step No. 3. As to all of the claims which remain before the Umpire, however, the Company's position has been the same. It asserts:

Exhibit "B" Attached to Affidavit of William J. Theis.

1. That the only standard by which the validity of these new incentives can be tested before the Umpire is that set forth in Section 5(b) of the May 25th Agreement;

2. That each of the protested incentives meets that standard; and

3. That since none of the Union's claims are relevant to the question of whether the new incentives meet the requirements of Section 5(b), all of the claims should be dismissed.

The grievances involved in this proceeding have apparently been selected from a large number of similar grievances -- all involving the replacement of incentives under the May 25th Agreement -- which have been appealed through the four regular steps of the grievance procedure and which are now pending before the joint committee established for the review of such grievances by Section 5(e) of the May 25th Agreement. The Umpire gathers that as to all such grievances the Company's position has been the same as that outlined above; i.e., that the sole contractual issue that could properly be raised by such a grievance was whether or not the new standard-hourly-wage-rate-based incentive plans conformed to the requirements of Section 5(b) of the May 25th Agreement and that all other issues were irrelevant. The selected cases have been brought to the

Umpire, essentially, as a means of testing the validity of the Company's position. It is this general question, therefore, that must first be answered.

The Umpire will state his answer immediately. He finds that as to any straight incentive replacement under the May 25th Agreement -- i.e., where the Company does not incorporate in the new incentive plan adjustments then being made to offset technological changes -- the Company's position is correct. In such a case the sole standard which the Company must meet as a matter of contract obligation is that set forth in Section 5(b). On the other hand, whenever the Company <u>does</u> incorporate in one of its new standard-hourly-wage-rate-based incentive plans adjustments then being made to offset technological changes, the standards which the new incentive plan must meet are those set forth in Article V, Section 2(c) of the Main Agreement.

The Umpire is impelled to these conclusions by the clear language of the May 25th Agreement. Section 5 (a) of that Agreement provides that the Company shall:

> "... review each existing incentive plan the incentive base rates under which are not the applicable standard hourly wage rates and shall replace such plan with a new incentive plan the incentive base rates under which are the applicable standard hourly wage rates then in effect ..."

Section 5(e) provides that:

Exhibit "B" Attached to Affidavit of William J. Theis.

> "...If such new plan shall become the subject of a grievance, the grievance shall be determined in accordance with the principles set forth in this Section. ..."

The only principles set forth in Section 5 of the May 25th Agreement are those stated in Sections 5(b) and 5(c). Section 5(b) provides that:

> "Except as otherwise provided in this Section, where an existing incentive plan shall be replaced with a new incentive plan in accordance with the provisions of this Section, the new incentive plan (including all guarantees, allowances and payments in connection with such plan) shall meet the requirement that, over a past representative test period, the average hourly earnings of all the Employees assigned to a job under such new plan would not have been less under such new plan than the average hourly earnings received by all the Employees assigned to that job during such period under the incentive plan which it replaced." (Emphasis added.)

Section 5 (c) provides that:

> "Where the Management incorporates in a new incentive plan established in accordance with the provisions of this Section adjustments then being made by reason of any of the changes or other events specified in Section 2(c) of Article V of the Main Agreement as amended by this Agreement, such new plan (including all guarantees, allowances and payments in connection with such plan) shall meet the requirements set forth in such Section 2(c)." (Emphasis added.)

It follows from the above that when a grievance reaches the Umpire claiming that a new incentive, established

pursuant to Section 5(a) of the May 25th Agreement, does not meet the requirements of that Agreement, the Umpire must determine whether the new plan is governed by Section 5(b) or Section 5 (c). If Section 5 (b) applies, the only inquiry permitted him is into the question of whether the plan meets the test of comparative earnings during the "past representative test period," provided in that section. If Section 5(c) applies, on the other hand, his inquiry must be into the question of whether the new plan meets the requirements of Article V, Section 2(c), of the Main Agreement; i.e., the requirements that:

> "...Such new incentive shall be based upon the applicable standard hourly wage rate and shall, giving due effect to the change or other event by reason of which the new incentive shall have been established, be designed to provide compensation at least equal to the compensation that would have been provided under the incentive which it replaced and shall provide equitable compensation." (Emphasis added.)

The differences between the two standards are apparent. Section 2(c) of the Main Agreement has to do with the adjustment or replacement of incentives as a result of technological changes in the operations to which they apply. In a case arising under this section, the Umpire would have to determine whether or not the new incentive, "givir due effect" to the technological changes, was designed to provide

earnings at least equal to those that would have been provided by the old plan. Such a determination could properly involve a comparison of potential earnings from the two plans under many different circumstances, at many different periods, and at many different levels of production. Further -- and quite apart from this potential earnings comparison -- the Umpire would have to determine whether the new plan provided "equitable compensation." In a "2(c) case," therefore, any or all of the claims made by the Union in the present grievances might well be pertinent as involving either the comparison of potential earnings or the question of whether the compensation provided by the new plan was, under all the circumstances, "equitable."

The standard which the parties set forth in Section 5(b) of the May 25th Agreement is far more limited. Raising incentive base rates to the level of the standard hourly wage rates would necessarily alter the pre-existing relationships between production, incentive earnings and the minimum guarantee. Earnings under the new plans, in most cases, would rise more sharply with increases in production (and fall more sharply with decreases) than had been true under the old plans. In most cases, also, the level at which employees would begin to "make out" -- i.e., to receive incentive earnings over and above their standard hourly wage rates -- would be different. Faced with this situation, the parties provided in Section 5(b)

that earnings under the new plan must at least equal earnings under the old plan at the production level achieved during a "past representative test period." In Section 5(d) they defined the term "past representative test period" as meaning, in the absence of special circumstances, the period of three months next preceding the date on which the new plan replaced the old. If -- as applied to the actual production achieved during this "test period" -- the new plan would have produced earnings at least equal to those which the old plan did produce, the new plan meets the standard of Section 5(b).

This is the sole standard set forth in that section. The fact that in periods of increased or decreased production -- i.e., periods in which production exceeds or falls below the levels achieved during the "past representative test period" -- earnings under the new plan may not be the same as under the old is clearly irrelevant in applying this standard.

In developing the new standard-hourly-wage-rate-based incentive plans, the Company followed certain principles which it stated in a memorandum delivered to the Union members of the joint incentive Committee on July 31, 1957. This memorandum reads:

> "Each new incentive plan established pursuant to the provisions of Section 5 of the Supplemental Agreement dated May 25, 1956, between Bethlehem Steel Company and certain of its affiliates and United Steel Workers of America, shall be based upon maximum possible production as determined by the maximum possible output of the machinery or other equipment used or by the maximum possible output of a fully qualified

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employee, whichever is applicable, as follows:

"1. In the case of jobs which directly affect the rate of output, and where the output may be accurately and economically measured, the incentive plan will be designed to provide compensation in excess of the standard hourly wage rates applicable to such jobs in direct proportion to the amount by which actual output exceeds 75 per cent of maximum possible output; and

"2. In the case of jobs which do not directly affect the rate of output, or where output cannot be accurately and economically measured, the incentive plan will be designed to provide compensation in excess of the standard hourly wage rates applicable to such jobs in direct proportion to one-half the amount by which actual output or performance, whichever is applicable, exceeds 75 per cent of maximum possible output or performance."

In line with these principles, the Company first determined the "maximum possible output or performance" which it believed could be achieved on a particular operation. Where possible, it based this determination on time studies of the operation. Where time studies were not possible, the determination was based on records of production in past years. The Company emphasizes that it was not endeavoring in this determination to set a figure of normal production which could be reached under average conditions. It was setting a maximum figure -- but a maximum which it believed could be attained.

The Company then took 75% of this maximum and established it as the "break-even point" -- the point at

which the standard hourly wage rate (the minimum guarantee) should be paid. For production above that point, "direct" incentive workers are to receive incentive earnings on a "1 for 1" basis; i.e., one per cent in excess of the standard hourly wage rate for each one per cent in excess of the break-even point. "Indirect" incentive workers, on the other hand, are to receive incentive earnings on a "1/2 for 1" basis; i.e. one per cent in excess of the standard hourly wage rate for each two per cent in excess of the break-even point. Direct workers, who equaled maximum output, would thus receive earnings 33-1/3% above their standard hourly wage rates. Indirect workers, for maximum output, would receive an incentive gain of 16-2/3%.

It should be noted that up to this point none of the Company's procedure had any necessary relationship to the "past representative test period" standard of Section 5(b). That section says nothing about the principles which the Company should follow in developing the new incentives. It does not mention "maximum possible output," or a 75% "break-even point," or a distinction between "direct" and "indirect" incentive workers. It provides only that the new plan -- however developed and whatever its nature -- must meet the "past representative test period" comparative earnings test.

The Company therefore developed each new plan -- on a tentative basis -- entirely independently of the requirements of Section 5(b). Thereafter, each new plan was applied to the

production achieved during the applicable "past representative test period." For each job covered by a new plan, the earnings which would have been received during that period had the new plan been in effect were compared with the earnings which had, in fact, been received on that job under the old plan. If the "test period" earnings on a particular job under the new plan would have equaled or exceeded the actual "old plan" earnings on that job, the plan as to that job remained unchanged. If, however, the "test period" earnings on a particular job under the new plan would have been less than the actual "old plan" earnings on that job, the plan was amended as to that job by the incorporation of an "incentive adjustment" for the job equivalent to the difference in earnings. These incentive adjustments were made a permanent part of the new plan, payable to each employee on the affected jobs for each hour worked on an incentive basis as an addition to their incentive earnings.

An illustration may be appropriate. Suppose that Management was developing a new standard-hourly-wage-rate--vased incentive plan to replace an old plan which covered four different jobs. Suppose, further, that during the applicable "past representative test period," actual average hourly earnings under the old plan compared with hypothetical earnings under the tentative new plan as follows:

Exhibit "B" Attached to Affidavit of William J. Theis.

Test Period Earnings

Job	Old Plan	New Plan	Increase or Decrease
A	$3.10	$3.25	+ $.15
B	3.00	3.00	-
C	2.85	2.75	- .10
D	2.75	2.50	- .25

In such a situation, the tentative plan would be left unchanged as to jobs "A" and "B", for the employees on these jobs would have earned as much or more under the new plan as they did under the old, and, as to these jobs, the new plan already meets the requirements of Section 5(b). As to jobs "C" and "D", however, the tentative plan obviously would not meet the 5(b) test. Therefore, incentive adjustments would be added to the plan for those jobs in order that the plan as a whole might qualify. Employees on job "C" would receive an incentive adjustment of ten cents, which would be added to their incentive earnings for each hour worked on job "C" on an incentive basis. And a similar adjustment of twenty-five cents would be added to the incentive earnings of all employees working on an incentive basis on job "D".

With these amendments, the new incentive plan obviously conforms to the requirements of Section 5(b). Under that Section, the "representative test period" standard applies to "the new incentive plan (including all guarantees, allowances and payments in connection with such plan)." The incentive

adjustments are clearly "guarantees" or "payments in connection with" the plan. And if the new plan, including the incentive adjustments, had been in effect during the "past representative test period" the earnings on all jobs would necessarily have equaled or exceeded the earnings on those jobs under the old plan.

This "incentive adjustment" procedure has been followed in developing all of the new incentives which are involved in the present grievances. With the adjustments, each of the challenged incentives clearly meets the test of Section 5(b), if the "past representative test periods" used by the Company were proper. As to any of the grievances, which are controlled by Section 5(b) and in which no issue has been raised regarding the propriety of the "past representative test period," the Umpire must hold that he is without authority to declare the new incentives invalid or to order their adjustment.

The Johnstown, Lebanon, Pottstown and Bethlehem grievances fall into this category. In none of these grievances is there any evidence that Management had incorporated into the new plan or plans adjustments "then being made" by reason of technological changes in the operations involved, and the cases are therefore clearly controlled by Section 5(b). In none of these grievances, further, has the Union challenged the "past representative test period" used by the Company. In Johnstown Grievance No. A-1100, relating to the new incentive plan for

the Rail Anchor units at Cautier, the sole claims remaining after the settlement of the "minimum daily guarantee" issue are (1) that the "maximum output" figures used in the plan are unrealistically high; and (2) that if production should fall below the "test period" level the employees would earn less than they had under the old plan for equivalent production. In Lebanon Grievance No. 2990, relating to the new incentative covering certain bolt making machines, the claim is that -- though the employees have generally enjoyed increased earnings under the new plan -- they have had to "speed up" their production to attain these increased earnings and that they would lose earnings (as compared to the old plan) if production should fall substantially. In Pottstown Grievance No. A-1671, relating to the new Detail Punching incentive plan, the claim is that the new plan eliminates certain "gravy" rates that had existed in the old plan and that as a result, on certain types of operations, the employees earn less money than previously. And in Bethlehem Grievances Nos. 13754, 13992 and 13993, relating to the new incentive plans in the No. 2, No. 3 and No. 4 Open Hearth Departments, the sole claim made at the hearing was that it was improper and inequitable to pay the "indirect" workers covered by the new plans on a "1/2 for 1" rather than a "1 for 1" basis. In the Umpire's opinion, he is without power to hold these incentive plans invalid on the basis of any of these claims, and the Union's request for such a holding must, in each of these cases, be denied.

Exhibit "B" Attached to Affidavit of William J. Theis.

The two remaining sets of grievances present different problems. Sparrows Point Grievances Nos. 4424-3841, 4425-9024, 4426-9962, 4427-9963 and 4449-9964 relate to the replacement of incentive plans in the No. 1, No. 2 and No. 3 Open Hearth Departments. Certain of the Union claims in these grievances -- i.e., the claims that the figure of "maximum possible output" was unrealistic and unattainable, that the "1/2 for 1" payments to "indirect workers" are unfair and improper, and that new plans do not include adequate delay allowances -- fall into the category of those just discussed and must be held to be irrelevant to the question of whether the new plans meet the standard of Section 5(b). Further, as there is no evidence that Management incorporated in these plans adjustments to offset concurrent technological changes, it must be held that Section 5(b) controls these cases.

At the hearing, however, the Union raised a claim that the "past representative test period" used by Management in developing these plans was improper, since the amount of coke oven gas used in the Open Hearths during the test period differed substantially from the amount which has more recently been available for such use. This claim, though related to the claim regarding the absence of a "fuel factor allowance" in the new plans, which was sent back to Step No. 3 by mutual consent, seems to the Umpire to have an independent standing. It is a claim, moreover, which is obviously relevant

to the question of whether the Company has properly applied the test of Section 5(b) and could thus properly be considered on its merits by the Umpire.

This claim was not raised specifically in the lower steps of the Grievance Procedure. In the circumstances of this case, however, the Umpire does not believe that it should be dismissed on this technical basis. Rather, since the issue could not be thoroughly explored at the recent Umpire hearing, it seems fair and appropriate to refer it back for consideration at Step No. 3 of the Grievance Procedure on the same basis as the related "fuel factor allowance" issue.

Lackawanna Grievance No. 9600 relates to the new incentive plans installed, pursuant to the May 25th Agreement, in the No. 1, No. 2 and No. 3 Open Hearths. There are seven such new plans, three of which apply, respectively to the employees in the No. 1, No. 2 and No. 3 Open Hearth Departments on the basis of the tonnage produced by the particular department in which they work; one of which applies to employees (Slurry-men, Mould men, Stripper men, etc.) who are paid on the basis of the tonnage in all three departments; and three of which apply to "indirect" workers (mechanical, electrical and metallurgical employees) who are paid a "1/2 for 1" premium derived from the tonnage of all three departments. The claims of the Union as to these plans resemble, for the most part, those which have been discussed before; i.e., they concern the payment of the "indirect workers"; the setting of

"maximum output" figures on the basis of past production records on individual furnaces rather than on the basis of the normally attainable production; and the fact that the plans do not provide for equal earnings for equivalent production under conditions differing from those which obtain during the "past representative test period." (It should be noted that as to the Open Hearth No. 1 plan, no claims were made during the grievance procedure and the only claim raised at the hearing was whether the earnings under this plan would be equivalent to those under the old plan if production dropped below the "test period" levels). If it were clear that the standard applicable to all of these places was that of Section 5(b), the Umpire's holding on the grievance would have to be similar to his holding on the Johnstown, Lebanon, Pottstown and Bethlehem grievances discussed above.

In so far as the grievance relates to the plan for the No. 2 Open Hearth, however, or to the four plans covering employees whose earnings depend in part on No. 2 Open Hearth production, the Umpire strongly doubts that Section 5(b) is controlling. During the spring, summer and fall of 1957, Management has been engaged in a program of enlarging certain of the furnaces in the No. 2 Open Hearth Department. Certain furnaces -- Nos. 28 and 29 -- were enlarged before the old plan was cancelled and replaced by the new plan. (The Umpire ruled on an "interim rate" question involving these furnaces in his Decision No. 500.) The new plan was installed, however,

on September 8, 1957, while certain other furnaces in the department were either in the course of enlargement or awaiting the start of enlarging operations. The Company introduced into the new plan, rates applicable to these enlarged furnaces; specifically, rates applicable to small heats in an enlarged furnace and to large heats in an enlarged furnace. As additional furnaces were enlarged, these rates were applied to them. In view of these facts, it seems to the Umpire that Management might well be held to have "incorporated into the new incentive plan ... adjustments then being made by reason of ... changes or other events specified in Section 2(c) of Article V of the Main Agreement" and that the controlling section of the May 25th Agreement is Section 5(c). If that is so, of course, the applicable standard by which the new incentives dependent on No. 2 Open Hearth production should be judged is that set forth in Article V, Section 2(c) of the Main Agreement, and under that section all of the Union's objections to the incentives would clearly be relevant and open to an Umpire decision on the merits.

The question of the possible applicability of Section 2(c) of the May 25th Agreement to the new incentives which depend on No. 2 Open Hearth production, however, was not raised or argued at the hearing. Here, again, in view of the importance of the issue and the rather unusual nature of this proceeding, the Umpire does not believe that the point should be dismissed on that basis. Instead he will refer the griev-

ance back to Step No. 3, where this question -- as it affects the No. 2 Open Hearth and the incentives which depend on its production -- can be fully explored by the parties.

One other point should be mentioned in connection with this Lackawanna grievance. After the new plans had been installed, on September 8, 1957, a technological change was made in No. 3 Open Hearth having to do with "roof lanced oxygen heats." On March 9, 1958, the new plan for this department was amended to provide special rates for such heats. The Umpire was informed at the hearing that this change in the plan is the subject of a separate grievance. In order that the contractual framework affecting these new plans shall be clear, it should be noted that this grievance will not be controlled by the May 25th Agreement but will be governed, rather, by the normal application of Article V, Section 2(c) of the Main Agreement.

This situation, the Umpire believes, is extraordinary and deserves comment. Under past agreements, as the Umpire pointed out in the so-called "Wheel Mill Case" (Decision No. 324; 18 Impartial Umpires' Decisions 245), existing incentives -- whether good, bad or indifferent -- were considered "frozen". It was appropriate, therefore, to consider cases involving the adjustment of incentives to offset technological changes as involving primarily the question of whether the adjustment gave "due effect" to the change and resulted in earnings which were

in "equitable relationship" to those under the previous rates. Questions concerning the general nature of the old plan and whether the componsation it provided should be considered "equitable" could not, on that basis, properly be considered.

The Umpire's holding in the present case -- forced on him, he believes, by the clear language of the May 25th Agreement -- necessarily means that such general questions can be raised in future Article V, Section 2 (c) cases in addition to the question of whether the adjustment gives due and proper effect to the technological change. The Umpire's holding with regard to the grievances before him (excluding those that he has referred back to Step No. 3) is simply that the new incentive plans meet the standard of Section 5(b) and that under the May 25th Agreement that is all that he has power to decide. He obviously has not held that any of these incentives provides "equitable compensation" (or, for that matter, that any of them do not provide "equitable compensation"). If, therefore, any of them in the future are affected by technological changes which require an incentive adjustment, the question of the general "equity" of the plan will still be open for consideration in an Article V, Section 2(c) proceeding.

The Umpire doubts that it was the desire of either party that the equity of the new standard-hourly-wage-rate-based incentives should thus be left in doubt, incapable of final determination until some technological change opened the way. Yet this is the clear and inescapable result of

their present agreements. Unsound as he believes this result to be, the Umpire cannot alter those agreements or interpret them to suit himself.

One final point: In its presentation of these cases, the Union drew attention to the fact that in Article V, Section 2(h), of the Main Agreement (negotiated concurrently with the May 25th Agreement) the parties provided for the establishment of a joint committee of Union and Company representatives

> "... to review incentive problems with a view to achieving maximum understanding between the parties."

The Union argued that by this action the parties negated any intent to give the Company a free hand in setting incentive policy subject only to the standards of Section 5(b) of the May 25th Agreement. As to that particular argument, the Umpire can only say that the May 25th Agreement clearly does leave it to the Company to develop the standard-hourly-wage-rate-based incentive plans as it sees fit, and that the Umpire cannot hold them invalid if they meet the test of Section 5(b) and if Section 5(b) is controlling. On the other hand, it is clear that the claims made in these cases, which the Umpire had no power to rule on, are proper subjects for continued discussion by the "maximum understanding" committee. And the general question raised by the Umpire, as to the wisdom of continuing a situation in which the equity of large numbers

of existing incentives may long remain in doubt, is also within the province of that committee and of the parties themselves in their forthcoming contract negotiations.

D E C I S I O N

For the reasons stated:

1. Lackawanna Grievance No. 9600 is referred back to Step No. 3 for consideration of the question of whether -- as to the incentives which are dependent, in whole or in part, upon No. 2 Open Hearth Department production -- the grievance is or is not controlled by Section 5(c) of the May 25th Agreement rather than by Section 5(b).

2. Sparrows Point Grievances Nos. 4424-3841, 4425-9024, 4426-9962, 4427-9963 and 4449-9964 are referred back to Step No. 3 for consideration of the question as to whether the "past representative test period" used by Management in developing the new incentive was proper in view of the alleged changes which have occurred in the availability of coke oven gas.

Exhibit "B" Attached to Affidavit of William J. Theis.

3. The settlement of the "minimum daily guarantee" issue in Johnstown Grievance No. A-1100 and the referral of Lebanon Grievances Nos. 2887 and 2992 to Step No. 3 by mutual consent are noted.

4. The remaining claims in these various grievances, though still appropriate for consideration by the "committee on maximum understanding" established by Article V, Section 2(h), of the Main Agreement, are held to involve issues on which the Umpire is without authority to rule under the May 25th Agreement and are dismissed by him on that basis.

s/s RALPH T. SEWARD
Ralph T. Seward
Impartial Umpire

Exhibit "C" Attached to Affidavit of William J. Theis.
BETHLEHEM STEEL COMPANY

Meeting of Joint Incentive Committee
June 2, 1964

The Joint Incentive Committee appointed pursuant to Section 5(e) of the Supplemental Agreement dated May 25, 1956 (the May 25th Agreement) met at Bethlehem, Pa. Those present were:

For the Company	For the Union
D. C. Barnum	G. L. Frey
L. Fenninger, Jr.	W. J. Theis
J. S. Ferguson	

Lackawanna Plant grievances relating to incentives established pursuant to Section 5(b) of the May 25th Agreement were discussed and disposed of by the Committee as described below:

Grievance No. A-7329 - Incentive for the Hooker on Crane No. 384 in the Cold Strip Mill

The Committee noted that Article V, Section 2(c), of the Agreement dated April 6, 1962, cited in the Union's brief does not apply to this grievance since the incentive in question was established pursuant to Section 5(b) of the May 25th Agreement.

Exhibit "C" Attached to Affidavit of William J. Theis.

Because the subject matter of Grievance No. A-7329 is closely related to that of Grievance No. B-2440, those grievances were combined by the Committee.

The Committee remanded those grievances to Step No. 3 of the grievance procedure with the recommendation that the incentives to which they relate be replaced on a current basis by an incentive relating to all annealing furnaces and applying, without loss of earnings, to all the jobs involved in those grievances.

Grievance No. B-5587 - Incentive for Crews on Cranes Nos. 290, 291 and 317 and Stocker (Yard)-Hot Strip Mill (non-operating turns)

The Committee noted that Article V, Section 2(c), of the Agreement dated January 4, 1960, cited in the Union's brief does not apply to this grievance since the incentive in question was established pursuant to Section 5(b) of the May 25th Agreement. The Committee also noted that there is not any issue as to the test period selected pursuant to that section, since, although that issue is mentioned in the grievance, it has not been argued in the lower steps of the grievance procedure or in the Union's brief.

The Committee remanded the grievance to Step No. 3 of the grievance procedure with the following recommendations:

1. The parties are to review the job assignment of the Stocker (Yard) on down turns to determine whether the duties of the job qualify it as an indirect job

for incentive purposes and whether the appropriate incentive is being applied to the job; and

2. The parties are to review the method used by the Company in comparing earnings of the Stocker (Yard) on down turns in the past representative test period to ensure that earnings on down turns only are compared.

Grievances Nos. B-3139 and B-3141 - Incentives for Mechanical and Electrical Maintenance Employees in the Continuous Sheet, Strip and Plate Mills Division

The Committee noted that Article V, Section 2 (c), of the Agreement dated January 4, 1960, cited in the Union's brief does not apply to these grievances because, as indicated under "The Issue" in that brief, the incentives in question were established pursuant to Section 5(b) of the May 25th Agreement. The Committee also noted that the Local Union withdrew the issues relating to the past representative test period and the designation of the incentives as indirect at the arbitration hearing on November 27, 1962. The statement of the Company representative at the Step No. 4 meeting in October, 1963, in respect of these grievances that any adjustments which may be made in incentives which serve as components of the incentives involved here will also apply to these incentives confirms the established policy of the Company which the Committee has understood and agreed to. That policy precludes the existence of any issue in these grievances relating to component incentives as to which there are unresolved grievances.

Accordingly, the Committee finds that there are no remaining open issues in these grievances.

Grievances Nos. H-829 and H-830 - Incentives for the Crews of Cranes Nos. 412 and 441 - Cold Strip Mill

The Committee noted that Article V, Section 2(c), of the Agreement dated April 6, 1962, does not apply to these grievances because the incentives in question were established pursuant to Section 5(b) of the May 25th Agreement. The Committee noted also that there is no issue in respect of the past representative test period since, although that issue is mentioned in the grievances, it has not been argued in the lower steps of the grievance procedure or in the Union's brief. For the reason given above in the discussion of Grievances Nos. B-3139 and B-3141, the Committee finds that there is no issue relating to component incentives as to which there are unresolved grievances.

Accordingly, the Committee finds that there are no remaining open issues in these grievances.

The foregoing conclusions and dispositions have been agreed to by the Joint Incentive Committee.

FOR THE UNION:	FOR THE COMPANY:
William Jacko	D. C. Barnum
George L. Frey	L. Fenninger, Jr.
William J. Theis	J. S. Ferguson

Exhibit "C" Attached to Affidavit of William J. Theis.

Bethlehem Steel Company
(INCORPORATED)

Bethlehem, Pa.

June 3, 1964

Messrs. William Jacko
G. L. Frey
W. J. Theis

Attached hereto is a draft of memorandum describing the actions of the Joint Incentive Committee at its meeting yesterday. As soon as I have your comments on it, I will prepare copies for signature and distribution.

The Committee's conclusions as to Grievances Nos. B-3139, B-3141, B-829 and B-830 leave open the question whether those grievances are to be submitted to arbitration. Under the arbitration procedure adopted August 22, 1962, by the Company and the Union, a copy of which is also attached, if agreement as to the disposition of a grievance cannot be reached by the Committee, the Union Chairman may reactivate the grievance by giving notice to the Manager of Industrial Relations within 15 days after the date of the disagreement. Consequently, if the above-listed grievances are to proceed to arbitration, such notice should be given by June 17.

Very truly yours,

L. Fenninger, Jr.

cc: D. C. Barnum.
J. S. Ferguson

Exhibit "C" Attached to Affidavit of William J. Theis.

United Steelworkers of America
650 RIDGE ROAD
Lackawanna 18, New York

TA 5-1610

June 12, 1964

STEP 4 MEETING HELD _____
MINUTES RECEIVED BY UNION _____

Mr. John J. O'Connell
Manager of Industrial Relations
Bethlehem Steel Company
Bethlehem, Pa.

Dear Mr. O'Connell:

According to my instructions contained in a letter dated June 10, 1964 from Mr. William Jacko, I have been informed that it is my responsibility to appeal incentive rate cases of this nature to arbitration.

I am, therefore, appealing to arbitration on behalf of Local Union 2604, Grievances Nos. B-3139, B-3141, H-829 and H-830.

Very truly yours,

Arthur J. Jardin
Arthur J. Jardin
Staff Representative

AJJ/aa
cc to:
William Jacko, United Steelworkers of America
William Theis " " " "

Affidavit of Irving C. Trost in Support of Steelworkers' Motion for Summary Judgment.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

LAWRENCE RALPH and DIVERS OTHERS, Plaintiffs, vs. THE BETHLEHEM STEEL CORPORATION and THE UNITED STEELWORKERS OF AMERICA, Defendants.	Civil Action No. 11,892

AFFIDAVIT OF IRVING C. TROST
IN SUPPORT OF STEELWORKERS' MOTION
FOR SUMMARY JUDGMENT

City of Buffalo)
County of Erie) ss.

Irving C. Trost, being duly sworn, deposes and says:

1. I reside at 125 Weyand Street, Buffalo, New York. I am fifty-nine (59) years of age.

2. I am presently employed by Bethlehem Steel Corporation at its Lackawanna, New York plant as an inspector in the strip mill; my present wage rate is about $5.75 per hour. After graduating from Seneca Vocational High School, I was hired and have been employed continuously at the Lackawanna plant since about 1937. During this lengthy period I was assigned to a variety of jobs including laborer, hooker, crane operator, and since 1945, several positions in the inspection department.

3. Commencing about 1942 the Steelworkers Union succeeded in organizing the production and maintenance employees at the plant and Bethlehem recognized the Union as exclusive representative for purposes of collective bargaining. Local Union 2604 was chartered by the International Union and I became and have remained a member in good standing to date.

4. During this period I have been active in Union affairs and I have held numerous elected offices.

(a) From 1950-54 I served as an assistant grievance committeeman (or shop steward) for the cold mill department of the strip mill. In that position I was responsible for filing, processing, handling and resolving grievances relating to the meaning, interpretation and application of the contract in the first, second and third steps of the grievance-arbitration procedure.

(b) In 1954 I was elected Vice President of Local Union 2604 and then succeeded to the Presidency in 1956.

(c) In June 1956 I was elected Financial Secretary.

(d) From June 1960-62 and, once again, from June 1964-70 I was elected and served as one of the Local's two top grievance committeemen.

5. As a top grievance committeeman, I not only participated in filing, processing, handling and resolving grievances in the first three steps but, in addition, in the fourth step and arbitration, as well. As to the latter, I worked closely with Mr. Arthur Jardin, the staff representative employed by the International Union who serviced Local 2604 over an extended period from about 1952-1968.

In my capacity as a top grievance committeeman I represented the Union in numerous fourth step meetings with management held at the corporation's Bethlehem office or New York City. These meetings were convened about once every two months so that annually I would estimate that I participated in decisions concerning hundreds of grievances. In each, the Union representatives were called upon to exercise their best judgments to determine, among other alternatives, whether the grievance should be submitted to

arbitration, withdrawn for lack of merit, compromised or settled on a negotiated basis, or remanded back to the third step for further consideration by the parties at the local level.

In some cases which we processed to arbitration, I actively participated in pre-arbitration meetings and presenting the Union's case to the Umpire either alone or in conjunction with the International staff representative, Arthur Jardin.

Naturally, in the course of performing this function over a period of years, I was required to become very familiar with the provisions of the contracts in effect between Bethlehem and the Steelworkers.

6. I have been advised that this lawsuit relates to two incentive grievances (B-3139 and 3141) involving the electrical and mechanical maintenance employees working in the Continuous Sheet, Strip and Plate Mills Division at the Lackawanna plant.

7. The background events which gave rise to these grievances and many others like it refer back to 1956. On May 25, 1956 Bethlehem and the Steelworkers executed a Supplemental Agreement relating to incentive rates applicable on a corporation-wide basis.

The Agreement required the Corporation to replace all existing incentive plans with new plans in which the incentive base rates were the applicable standard hourly wage rate then in effect. This was a major task in view of the large number of incentive plans then in existence in which the applicable standard hourly rate was not the incentive base rate.

In accordance with its obligation under the Supplemental Agreement, management periodically established one new incentive plan after another over a large time span. In turn, Local 2604, as I am sure was the case with other Locals representing affected employees of Bethlehem, responded by filing numerous grievances challenging the propriety of such incentive plans and rates.

8. Generally speaking, these incentive grievances were

processed through the first three steps without resolution since many of the Union's claims raised basic issues of contract interpretation relating to the Supplemental Agreement which had not yet been passed upon or determined by the Permanent Umpire.

9. On April 17, 1960 management established a new incentive plan for the electrical and mechanical maintenance employees in the strip mill department. After reviewing the grievance files in B-3139 and 3141, I have refreshed my recollection that I was at the third step meetings conducted with management representatives at the Lackawanna plant on November 28, 1960 and February 21, 1961, respectively. As reflected by the minutes of those meetings (See Exhibits "A" and "B" attached) the Union's position followed closely along the lines of the original first step grievances as filed in June 1960. It is also clear from the Minutes that B-3139 and B-3141 were but two of a large number of related grievances in which Local 2604 was relying on similar arguments to challenge a variety of new incentive rates established by management in numerous departments.

In B-3139, the Union explained the basis of its third step grievance as follows:

> "The Union disagrees with the new rate instituted by the company on the following positions (see, attached sheet)*. The Union maintains that the above positions are direct workers instead of indirect and should be paid as such; also the Union disagrees with the test representative period that the company has used for the method of payment. The Union requests Management to pay the above positions retroactive pay. The Union also contends that the rates are unreasonable and unfair. This request is made pursuant to Article V, Section 2(c), paragraph 3 of the Agreement."
> * Sheet attached to grievance gives list of grievants and their positions.

Likewise, as to Grievance B-3141, the Union explained its position in similar terms.

10. Since these grievances were not resolved in the third step, they were processed to the fourth step and ultimately to arbitration. On November 27, 1962 a hearing was conducted before

Umpire Seward at which the Union was represented by staff representative Jardin and numerous local union grievance committeemen. On that occasion, the parties advised the Umpire that there was no need for a full hearing since they had reached the following understanding (see Exhibit "C" attached):

> "The Union has agreed to withdraw the issue that mechanical and electrical maintenance jobs be designated as direct and the parties have agreed to remand these two grievances to Step No. 3 of the grievance procedure, pending the disposition of [incentive] rates cases involving the units which contribute to the Electrical and Mechanical Incentive Plan."

I was not present on that particular occasion. However, I had participated in prior discussions with staff representative Jardin and other local Union grievance committeemen concerning the strategy to pursue in these and other pending incentive cases. We agreed: (1) that since maintenancemen involved in these two grievances serviced and repaired equipment and did not directly affect the amount of output per machine they thus would not qualify as "direct" workers; and (2) that, as indirect workers, the incentives for the electrical and mechanical maintenance employees involved would be based upon the incentive performance of the "direct " workers in the operating units (the so-called "contributing units") in the strip mill. Those contributing units included, among others: hot mill proper, continuous picklers. tandem mills, skin mills (Nos. 2,3, & 5) and annealing. Since all of the Union's grievances challenging the new incentive rates put into effect in these contributing units had not yet been resolved as of the November 27, 1962 hearing date and, further, since such a resolution was necessary before the Union could decide what course of action to follow for the indirect workers, we agreed that the most practical approach was to send these grievances back to the third step awaiting the outcome of the contributing unit grievances.

As shown in the quoted portion from the transcript of the arbitration hearing this is precisely what the parties agreed to.

11. Thereafter, on August 9, 1963, these grievances were considered, once again, at a third step meeting which I attended. No resolution resulted. At the fourth step meeting in October 1963, the grievances remained unresolved. However, one major improvement took place from the Union viewpoint: management expressly represented that if as a result of the pending grievances filed on behalf of the direct employees in the contributing units any adjustments were made in their incentives then such adjustments would also apply to the electrical and mechanical maintenance employees.

12. It is my understanding that on the basis of this assurance the Union members of the Joint Committee agreed at the 4 1/2 step meeting in Bethlehem, Pa. on June 4, 1964 that there were no remaining open issues to submit to arbitration.

In reviewing the Minutes of that meeting of the Committee, I noted the statement that the Local Union withdrew the issue relating to its orginal challenge to management's classification of the grievants as "indirect" workers. As I described above in paragraph 10, the Local did do so for the perfectly logical good faith reason that in its judgment such a position could not be sustained in arbitration.

I also noted that the Committee's Minutes state that the Local Union also withdrew the claim urged in the earlier steps of the grievance procedure that management in establishing new incentive rates for the electrical and mechanical maintenance employees in the strip mill failed to meet the standard set forth in section 5(b) of the Supplemental Agreement because the three month split period prior and subsequent to the July 1959 steel strike did not constitute a "representative test period".

Prior to the time that Local 2604made its decision to withdraw this issue from these grievances, several discussions took place between myself, staff representative Jardin, Al Mahoney,

the assistant grievance committeeman for the mechanical employees in the strip mill, Bill Swiercz, the assistant grievance committeeman for the electrical employees in the strip mill, and Jim Lafferty, another top grievance committeeman. As a result of those discussions the concensus was that management had used a "representative test period" by selecting the two weeks prior to the July 1959 strike and the ten-eleven week period immediately after the strike, covering from about November 15, 1959 to January 30, 1960. Management did not select this particular period just for the mechanical and electrical maintenance departments. Rather, to the best of my recollection, management had previously selected an identical or closely related test period for the direct workers employed in several of the contributing units.

In fact it was the judgment of myself and several others that insofar as the grievants in B-3139 and 3141 were concerned this period was favorable to the Union. As I viewed the situation, both the time span shortly before the strike (when customers of Bethlehem would be stockpiling in anticipation of a strike) and the period immediately after the strike (when customers' demands should have also been high because the lengthy 116-day strike had depleted their stock piles) were periods of at least average production, This meant to me that under the old incentive plans, the employees should have made out quite well during that period. Thereafter, if Bethlehem established a new plan which yielded a lower incentive, management was obligated to make an additional payment -- the so-called incentive adjustment ("IA") -- reflecting the difference between the old and the new incentive rate.

In the strip mill, to the best of my recollection, virtually every new rate that replaced an old rate under Section 5(b) of the Supplemental Agreement was for a lesser amount of money. This meant that it was supplemented by an "IA".

For the indirect workers the "IA" was a constant figure and, once established, it became, in effect, a minimum guarantee to the affected employees for the future irrespective of their actual rate

of production. It was very desirable from the standpoint of the indirect workers, therefore, to get an "IA" in the highest monetary amount possible. In my judgment even if the Union had selected another three month period in lieu of that chosen by management this would not have produced a higher "IA".

One method of achieving a satisfactory "IA" was to make certain that the representative test period was one during which production within the unit in question was at least average; for this would help insure a substantial spread betweeen the old rate and the new rate, and, in turn, this meant a high "IA". In making this judgment, I was mindful that we were concerned with getting the employees favorable earning opportunities in the future application of the new incentive plans.

Of course, from an administrative sense, it would have been desirable if the new incentive plans for each of the contributing units within the strip mill and for the electrical and mechanical maintenance groups all were established at the same time on the basis of the same representative test period. But the realities were that as management completed each of its evaluations of existing plans it implemented the new ones piecemeal so as to avoid unduly delaying the establishment of all the new plans. This procedure did not expedite the situation for the indirect workers involved here because management first completed the establishment of new incentive plans for each of the units which contributed to the indirect workers' incentives before implementing a new incentive plan for them.

13. Even though the Union representatives to the Joint Incentive Committee agreed at the "4 1/2 step" meeting in June 1964 that there were no open issues which could be submitted to arbitration, there had been a long-standing practice at Lackawanna whereby the Local decided which cases it would process to arbitration even if the International disagreed. And here, because the employees involved in grievances B-3139 and 3141 expressed a strong sentiment to press their cases to arbitration, the Local did so over management's strong objection that the cases had already been resolved at the 4 1/2 step.

14. On November 18, 1964 a hearing was conducted by Permanent Umpire Seward at Lackawanna. As a top grievance committeeman, I particpated along with staff representative Jardin on behalf of the Union.

I have recently reviewed the transcript of that hearing. The Union did try to make the argument that the new incentives affecting employees in Grievances B-3139 and 3141 were defective for not producing "equitable compensation." But this was the same argument that Seward rejected in his decision in 1959 and during the hearing (Tr. pages 157-159) he stated:

> "THE UMPIRE: On the record.
> Here is what you have. This is what you have got before me, and it grows out of decisions and problems which go back to 1958 and 1959 after the May 25th Agreement was first being put into effect. You remember those big cases down in New York.
> MR. JARDIN: Yes. You were the Arbitrator, too I remember.
> THE UMPIRE: That is right. And as I held then, and as the May 25th Agreement clearly provides, when you have just a simple substitution of a standard hourly wage rate based incentive for one of the old incentives, what the parties have provided in May 25th Agreement is just this one standard that the Company has to meet, and that is the past representative test period. And that is not the minimum guarantee.
> If the incentive is so engineered that applying it with the adjustments to the proper production which was made [in] the past representative test period,...[the] production come[s] out with equal earnings, the incentive as the parties have written this Agreement is O. K.
> That does not mean that if the production record later on was lower, that earnings won't drop below the past representative test period. Or if they go higher, they will go above.
> But the test the parties set up was that for the particular production experience of that particular 3 months, if the incentive as adjusted meets those earnings then it is O. K. And I am powerless under the May 25th Agreement to apply any other standards."

15. Thereafter, on July 12, 1965, Seward issued his award holding, in agreement with the action of the Joint Incentive Committee, that the cases must be dismissed since no open issues remained.

16. It is my understanding that, in accordance with Bethlehem's prior assurance that any adjustments in the contributing units would be applicable to the incentives for the grievants, in about May 1965, Bethlehem offered to make certain hourly adjustments for various jobs the effect of which was to offer approximately $89,000 backpay to these employees covering the retroactive period from April 1960-June 1962.

Affidavit of Irving C. Trost in Support of Steelworkers' Motion for Summary Judgment.

That offer was apparently rejected by the employees concerned at a membership meeting and to the best of my knowledge the money has never been given to the employees.

17. In all my deliberations concerning Grievances B-3139 and 3141, the positions I took and judgments I made, I had only one purpose -- to carry out my job as representative of the employees concerned in a reasonable, fair and honest fashion.

At no time did I act out of personal dislike or hostility or with a desire to discriminate against any of the employees involved. In fact, I believe my own son Robert Trost, a millwright in Department 422, is one of the grievants who is a plaintiff in this suit.

Irving C. Trost

Irving C. Trost

Subscribed and sworn to before me this 7th day of July, 1972.

Eleanor Samuels

Notary Public

ELEANOR SAMUELS
Notary Public, State of New York
Qualified in Erie County
My Commission Expires March 30, 1974

My commission expires: _____

Exhibit "A" Attached to Affidavit of Irving C. Trost.

#7

Bethlehem Steel Company - Lackawanna Plant
November 28, 1930
No. 595

Minutes of Step No. 3 Meeting with
Grievance Committee, U.S.A. - C.I.O.

Meeting Held in Administration Building, Bethlehem Steel Company, Lackawanna Plant from 8:30 A.M. on 11-28-60 to 4:30 P.M. on 12-1-60.

Those Present:

M. Strosky	422-372	-	Strip Mill	Mechanical
A. Mahoney	422-44	-	"	"
C. Womeldorf	422-300	-	"	"
W. Swiercz	432-114	-	"	Electrical
E. Rusiecki	432-80	-	"	Electrical
J. Szafranski	670-688	-	Strip Mill	
J. Meta	670-3088	-	"	
W. Bigaj	670-2674	-	"	
V. Nahrebeski	670-1417	-	"	
J. Lafferty	670-3187	-	"	
I. Trost	670-3110	-	"	
D. Leslie	670-737	-	"	
R. Mosher	670-2867	-	"	
W. McCann	670-3145	-	"	
R. Davis	670-849	-	"	
R. DeVaul	670-936	-	"	
E. Pacillo	670-603	-	"	
J. Rose	670-1973	-	"	
W. Burke	670-3187	-	"	
B. Jarnot	670-944	-	"	
M. Soda	670-635	-	"	
M. McCarthy	670-892	-	"	
E. Meister	670-3210	-	"	
H. Leonard	670-2350	-	"	
W. Regan	670-3058	-	"	
H. Wisz	670-1573	-	"	
J. Magyar	670-1757	-	"	
F. Pabian	670-2506	-	"	
M. Hearn	670-509	-	"	
R. Carestio	670-1179	-	"	
G. Hess	670-1584	-	"	
E. Buyea	670-3046	-	"	
W. Niziurski	670-802	-	"	
A. Buczkowski	670-252	-	"	
S. Amrozowicz	670-1104	-	"	

Exhibit "A" Attached to Affidavit of Irving C. Trost.

A. J. Jardin, Field Representative, U.S.A. - C.I.O.
B. J. Murphy, Staff Representative, U.S.A. - C.I.O.

C. L. Griffin, Assistant Management's Representative
P. W. Wagner
R. E. Balon

Exhibit "A" Attached to Affidavit of Irving C. Trost.

LOCAL NO. 2604 - GRIEVANCES NOS. B-3137, B-3138, B-3139, B-3142, B-3143, B-3144, B-3145, B-3146, B-3147, B-3148, B-3149, B-3150, B-3174, B-3175, B-3190, B-3203, B-3204, B-3205, B-3206, B-3355, B-3356, B-3364, B-3399, B-3400, B-3452, B-3453.

Gr. No. B-3137

"The Union disagrees with the new rate instituted by the Company on the following position of Inspector. The Union maintains that the above position is a direct worker instead of indirect and should be paid as such. The Union disagrees with the test representative period that the company has used for the method of payment. The Union request Management to pay the above position retroactive pay. The Union also contends that the rates are unreasonable and unfair. This request is made pursuant to Article V, Section 2(c) paragraph 3 of the Agreement."

Gr. No. B-3138

"The Union disagrees with the new rate instituted by the Company on the following position of Inspector. The Union maintains that the above position is a direct worker instead of indirect and should be paid as such. The Union disagrees with the test representative period that the company has used for the method of payment. The Union requests Management to pay the above position retroactive pay. The Union also contends that the rates are unreasonable and unfair. This request is made pursuant to Article V, Section 2(c), paragraph 3 of the Agreement."

Gr. No. B-3139

"The Union disagrees with the new rate instituted by the company on the following positions (see attached sheet)*. The Union maintains that the above positions are direct workers instead of indirect and should be paid as such; also the Union disagrees with the test representative period that the company has used for the method of payment. The Union requests Management to pay the above positions retroactive pay. The Union also contends that the rates are unreasonable and unfair. This request is made pursuant to Article V, Section 2(c), paragraph 3 of the Agreement."

* Sheet attached to grievance gives list of grievants and their positions.

Gr. No. B-3142

"The Union disagrees with the new rate instituted by the company on the following positions--(Scrubber Piler, Loader, Unloader, Tractor Operator, Mastman, Scrubber Operator, Pickler), and also disagrees with the Test Representative period that the Company

Exhibit "A" Attached to Affidavit of Irving C. Trost.

Gr. No. B-3400

"The Union disagrees with the new rate instituted by the Company on the following positions: Checker Shipping, Checker Stocking, Loader (Sheets and Plates), Bracer, Bundler, Checker Truck, Bundling Supply Man, Cranemen #300, Crane Chaser, Blocking Cutter and also disagrees with the Test Representative period that the Company has used for the method of payment. The Union requests Management to pay the above positions retroactive pay. The Union also contends that the rates are unreasonable and unfair. This request is made pursuant to Article V, Section 2(c), paragraph 3 of the Agreement."

Gr. No. B-3452

"The Union disagrees with the new rates instituted by the Company on the following positions--#17 Hallden Shear (Unit Operator, Slitter Operator, McKay Processor Operator, Piler Operator), and also disagrees with the Test Representative period that the Company has used for the method of payment. The Union requests Management to pay the above positions retroactive pay. The Union also contends that the rates are unreasonable and unfair. This request is made pursuant to Article V, Section 2(c), paragraph 3 of the Agreement."

Gr. No. B-3453

"The Union disagrees with the new rates instituted by the Company on the following position...Inspector on #17 Hallden Shear. The Union maintains that the above position is a direct worker instead of indirect, and should be paid as such, and also disagrees with the Test Representative period that the Company has used for the method of payment. The Union requests Management to pay the above positions retroactive pay. The Union also contends that the rates are unreasonable and unfair. This request is made pursuant to Article V, Section 2(c), paragraph 3 of the Agreement."

It was agreed by the Union and Management to hold the above grievance in abeyance in order that the complaints submitted by the Union could be further studied.

Exhibit "B" Attached to Affidavit of Irving C. Trost. #8

Bethlehem Steel Company - Lackawanna Plant
February 21, 1961
No. 599

Minutes of Step No. 3 Meeting with
Grievance Committee, U.S.A. - C.I.O.

Meeting Held in Administration Building, Bethlehem Steel Company, Lackawanna Plant from 8:30 A.M. on 2-21-61 to 12:00 Noon on 2-27-61.

Those Present:

E. Piersa	422-548	- Strip Mill Mechanical
A. Mahoney	422-44	- " " "
W. Swiercz	432-114	- Strip Mill Electrical
L. Bryski	432-29	- " " "
R. Davis	670-849	- Strip Mill
W. Beckwith	670-952	- " "
S. Boduch	670-3034	- " "
I. Trost	670-3110	- " "
J. Lafferty	670-3083	- " "
W. Burke	670-3187	- " "
W. Regan	670-358	- " "
S. Nowakowski	670-3125	- " "
J. Szafranski	670-688	- " "
J. Meta	670-3088	- " "
V. Nehrabeski	670-1417	- " "
W. Bigaj	670-2674	- " "
W. McCann	670-3145	- " "
J. North	670-1588	- " "
R. Moran	670-2166	- " "
R. DeVaul	670-936	- " "
M. McCarthy	670-892	- " "
W. Szczygiel	670-1040	- " "
J. Perelli	670-3136	- " "
J. Sperduti	670-362	- " "
M. Mendola	670-2043	- " "
F. Pabian	670-2606	- " "
J. Kulczyk	670-437	- " "
E. Buyea	670-3046	- Strip Mill
R. Carestio	670-1179	- " "
T. Koziol	747-344	- Specialty Products Shop
R. Prost	747-181	- " " "
J. Barbati	747-280	- " " "
R. Troup	747-160	- Specialty Products Shop
W. Sojda	747-130	- " " "
J. Moore	670-2112	- Strip Mill

Exhibit "B" Attached to Affidavit of Irving C. Trost.

A. J. Jardin, Field Representative, U.S.A. - C.I.O.
B. J. Murphy, Staff Representative, U.S.A. - C.I.O.

C. L. Griffin, Assistant Management's Representative
P. W. Wagner
R. E. Balon
W. G. Groben
J. Jackson
J. Allen
W. Biesecker

Exhibit "B" Attached to Affidavit of Irving C. Trost.

LOCAL NO. 2604 - GRIEVANCES NOS. B-3141, B-3235, B-3236, B-3397, B-3398, B-3462, B-3464, B-3465, B-3470, B-3491, B-4798, B-4800, B-4801.

Gr. No. B-3141

"The Union disagrees with the new rate and units instituted by the company on the following positions--(Motor Room Operator, Motor Room Attendant "A", Motor Room Attendant "B", Motor Room Attendant "C", Motor Room Attendant Helper, Crane Millwright, Crane Repairman "A", Crane Repairman "B", Crane Repairman "C", Crane Repairman Helper, Crane Oiler, Motor Inspector, Electrical Repairman "A", Electrical Repairman "B", Electrical Repairman "C", Electrical Helper, Electrical Oiler). The Union maintains that the above positions should be direct workers instead of indirect and should be paid as such; and also disagrees with the test representative period that the Company has used for the method of payment. The Union requests Management to pay the above positions retroactive pay. The Union also contends that the rates are unreasonable and unfair. This request is made pursuant to Article V, Section 2 (c), Paragraph 3 of the Agreement."

Gr. No. B-3235

"The Union disagrees with the new rate instituted by the Company on the following positions--#1, 2, 3, 4 Oilers, flopper and Piler, and also disagrees with the test representative period that the Company has used for the method of payment. The Union requests Management to pay the above positions retroactive pay. The Union also contends that the rates are unreasonable and unfair. This request is made pursuant to Article V, Section 2(c), paragraph 3 of the Agreement."

Gr. No. B-3236

"The Union disagrees with the new rate instituted by the Company on the following positions--#1, 2, 3, 4 Oilers Inspectors and also disagrees with the test representative period that the Company has used for the method of payment. The Union requests Management to pay the above positions retroactive pay. The Union also contends that the rates are unreasonable and unfair. This request is made pursuant to Article V, Section 2(c), paragraph 3 of the Agreement."

Gr. No. B-3397

"The Union disagrees with the new rate instituted by the Company on the following positions: Tester #1, Tester Helper. The Union maintains that the above position is a direct worker instead of indirect and should be paid as such and also disagrees with the test representative period that the

Exhibit "B" Attached to Affidavit of Irving C. Trost.

Company has used for the method of payment. The Union requests to pay the above positions retroactive pay. The Union also contends that the rates are unreasonable and unfair. This request is made pursuant to Article V, Section 2(c), paragraph 3 of the Agreement."

Gr. No. B-3398

"The Union disagrees with the new rate instituted by the Company on the following position: Testman. The Union maintains that the above position is a direct worker instead of indirect and should be paid as such, and also disagrees with the test representative period that the Company has used for the method of payment. The Union requests to pay the above position retroactive pay. The Union also contends that the rates are unreasonable and unfair. This request is made pursuant to Article V, Section 2(c), paragraph 3 of the Agreement."

Gr. No. B-3462

"The Union disagrees with the new rates instituted by the Company on the following position: #301 Craneman, and also disagrees with the test representative period that the Company has used for the method of payment. The Union requests Management to pay the above positions retroactive pay. The Union also contends that the rates are unreasonable and unfair. This request is made pursuant to Article V, Section 2(c), paragraph 3 of the Agreement."

Gr. No. B-3464

"The Union disagrees with the new rates instituted by the Company on the following position, #334 Crane Chaser, and also disagrees with the test representative period that the Company has used for the method of payment. The Union requests Management to pay the above positions retroactive pay. The Union also contends that the rates are unreasonable and unfair. This request is made pursuant to Article V, Section 2(c), paragraph 3 of the Agreement."

Gr. No. B-3465

"The Union disagrees with the new rates instituted by the Company on the following position, #448 Craneman, and also disagrees with the test representative period that the Company has used for the method of payment. The Union requests Management to pay the above positions retroactive pay. The Union also contends that the rates are unreasonable and unfair. This request is made pursuant to Article V, Section 2(c), paragraph 3 of the Agreement."

Exhibit "B" Attached to Affidavit of Irving C. Trost.

Gr. No. B-3470

"The Union disagrees with the new rates instituted by the Company on the following position: #299 Craneman, #309 Craneman, #306 Craneman and Handling Hooker (Coils); and also disagrees with the test representative period that the Company has used for the method of payment. The Union requests Management to pay the above positions retroactive pay. The Union also contends that the rates are unreasonable and unfair. This request is made pursuant to Article V, Section 2(c), paragraph 3 of the Agreement."

Gr. No. B-3491

"The Union disagrees with the new rates instituted by the Company on the following positions (Craneman #323 and Crane Chaser #323), and also disagrees with the test representative period that the Company has used for the method of payment. The Union requests Management to pay the above positions retroactive pay. The Union also contends that the rates are unreasonable and unfair. This request is made pursuant to Article V, Section 2(c), paragraph 3 of the Agreement."

Gr. No. B-4798

"The Union disagrees with the new incentive rate instituted by the Company on the following positions, Streine Operator, Assistant Streine Operator, Streine Piler, Streine Feeder, Streine Shear Helper, Streine Scrapman, Streine Separator man. The Union disagrees with the representative test period used to set up this rate for method of payment. The Union also requests that all monies lost through the institution of this rate be made retroactive from the date of institution, because this rate is unfair, unjust and unreasonable in pursuant to Article V, Section 2(c), paragraph 3 of the Agreement."

Gr. No. B-4800

"The Union disagrees with the new rate instituted by the Company on the following position--Inspector Streine #6. The Union maintains that the above position is a direct worker and not an indirect worker, and should be paid as such. The Union also disagrees with the representative test period that the Company used for the method of payment. The Union requests that all monies lost because of this change in rate should be retroactive to the institution of said rate. The Union maintains that this rate is unfair, unreasonable. This is in pursuant to Article V, Section 2(c), paragraph 3 of the Agreement."

Gr. No. B-4801

"The Union disagrees with the new rate instituted by the Company on the following position--Streine Weigher. The

Exhibit "B" Attached to Affidavit of Irving C. Trost.

Union maintains that the above position is a direct worker and not an indirect worker, and should be paid as such. The Union also disagrees with the representative test period that the Company used for the method of payment. The Union requests that all monies lost because of this change in rate should be retroactive to the institution of said rate. The Union maintains that this rate is unfair, unreasonable. This is in pursuant to Article V, Section 2(c), paragraph 3 of the Agreement."

It was agreed by the Union and Management to hold these grievances in abeyance in the 3rd Step of the Grievance Procedure in order that the issues raised with respect to these individual grievances can be investigated.

#18

Exhibit "C" Attached to Affidavit of Irving C. Trost.

In the Matter of the Arbitration
- between -
BETHLEHEM STEEL COMPANY
- and -
UNITED STEELWORKERS OF AMERICA
Local No. 2604

Lackawanna Plant
Lackawanna, New York
Tuesday, November 27, 1962
At 10:30 a.m.

Before:

RALPH T. SEWARD, ESQ., IMPARTIAL UMPIRE

Appearances:

GERALD REILLY, ESQ., Company Counsel
H. D. EVERDEN, Management's Representative
P. W. WAGNER, Assistant to Management's Representative

for the Management

ARTHUR JARDIN, Field Representative
A. L. MAHONEY, President, Local 2604
JAMES J. LAFFERTY, Grievance Committeeman
L. KACZOR, Asst. Grievance, Mechanical

GERTRUDE A. NIEDERER
Reporting Service

Telephone MUrray Hill 7-4210

223 East 38th Street
New York 16, N. Y.

Exhibit "C" Attached to Affidavit of Irving C. Trost.

William Swierez, Asst. Grievance, Electrical
John Green, Asst. Grievance, Mechanical
T. Carboni, Grievanceman
M. R. Soda, Grievanceman
Edward Podoba, Grievanceman
R. A. Davis, Grievanceman
William F. Regan, Witness

THE UMPIRE: Okay, Gentlemen, what do we have before us?

MR. REILLY: With respect to Grievances Nos. B-3139 and B-3141, the first of which was filed by Mechanical Maintenance employees and the second grievance which was filed by Electrical Maintenance employees, the parties have reached the following understanding: The Union has agreed to withdraw the issue that Mechanical and Electrical Maintenance jobs be designated as direct and the parties have agreed to remand these two grievances to step No. 3 of the grievance procedure, pending the disposition of rate cases involving the units which contribute to the Electrical and Mechanical Incentive Plan.

Is that a fair statement of the understanding?
MR. JARDIN: Yes

End of arbitration record

Supplemental Affidavit of Irving C. Trost in Support of Defendant Steelworkers' Motion for Summary Judgment.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

LAWRENCE RALPH and DIVERS OTHERS, Plaintiffs, vs. THE BETHLEHEM STEEL CORPORATION and THE UNITED STEELWORKERS OF AMERICA, Defendants.	Civil Action No. 11,892

SUPPLEMENTAL AFFIDAVIT OF IRVING C. TROST
IN SUPPORT OF DEFENDANT STEELWORKERS' MOTION
FOR SUMMARY JUDGMENT

City of Buffalo)
County of Erie) ss.

Irving C. Trost, being duly sworn, deposes and says:

1. I am submitting this affidavit as a supplement to my affidavit of July 17, 1972, previously filed with the court.

2. With respect to the incentive grievances Nos. B-2137 and B-2236 relating to direct workers in the 54-Inch Tandem Mill and the Hot Strip Mill, respectively, to the best of my recollection the Steelworkers determined sometime after May, 1961, that there was no meritorious basis for continuing to process said grievances in light of the Company's agreement to put revised rates into effect covering ~~those~~ workers. Because of this determination, the Union did not notify the Company prior to the July 15, 1961, deadline (agreed to by the parties) that it considered the revised rates to be unsatisfactory. However, after this deadline had been passed it is my understanding that the International Union staff representative reluctantly agreed to process those grievances to arbitration because certain individual employees were still dissatis-

Supplemental Affidavit of Irving C. Trost in Support of Defendant Steelworkers' Motion for Summary Judgment.

fied with the revised rates. Further, it is my understanding that Umpire Seward ultimately ruled that the Union's request for arbitration was untimely.

Irving C. Trost

Irving C. Trost

Subscribed and sworn to before me
this 3d day of April, 1973.

Eleanor Samuels

ELEANOR SAMUELS
Notary Public, State of New York
Qualified in Erie County
My Commission Expires March 30, 1974

Affidavit of William D. Scott in Opposition to Motion of Both Defendants for Order for Summary Judgment.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

[illegible]

Plaintiffs

vs

AFFIDAVIT

[illegible] & THE UNITED STATES OF AMERICA

Civil Action No. 11,89[illegible]

Defendants

STATE OF NEW YORK)
COUNTY OF [illegible]) ss.

WILLIAM D. SCOTT, being duly sworn deposes and says:

1. That I am the attorney for the plaintiffs in the above entitled action and am fully familiar with the facts and circumstances recited in this affidavit.

2. That this affidavit is submitted in opposition to the motion of both defendants herein for an Order pursuant to Rule 56 (c) of the Federal Rules of Civil Procedure granting Summary Judgment to the defendants.

3. That this affidavit is made on the personal knowledge of your deponent, such knowledge being obtained by means of pretrial discovery proceedings which are referred to herein.

4. The plaintiffs herein are mechanical and electrical maintenance workers in the strip mill of the BETHLEHEM STEEL LACKAWANNA PLANT. They service and maintain the seven steel production units within said strip mill. These units are, hot mill proper, hot mill shipping, continuous picklers, tandem mills, coil skin mills, annealing and cold mill shipping.

5. I will not relate in this affidavit the various mathematics and mechanics of the plaintiffs incentive plan [illegible]

ONLY COPY AVAILABLE

this has been gone into several times before both by memorandum to the Court and by affidavits of counsel for all parties.

6. In May of 1956, an agreement supplemental to the main contract in force was entered into between the company and the union. This "May 25 agreement" required the company to create new incentive plans for all workers in the plant. Under the new plans it was required that all incentive pay be based on the workers "standard hourly wage rate" instead of the old "tonnage" system.

7. In accordance with this May 25 agreement, new plans were instituted beginning on or about April 12, 1959, when the tandem mills received their new "standard hourly wage rate" based incentive plan. The hot mill proper received its new plan on May 3, 1959. The annealing new plan began on November 29, 1959, and the continuous pickler plan took effect on February 28, 1960. Finally, the coil skin mills new incentive plan became effective on April 10, 1960. Thehot and cold mill shipping plans are not relevant herein, inasmuch as they apparently filed no grievances at anytime objecting the plans they received.

8. The five production units aside from hot and cold mill shipping all began filing grievances objecting to the adequacy and fairness of their plans shortly after their plans became effective.

9. In January of 1960, another supplemental agreement was executed between the union and the company. This is called the "January 4, 1960 Memorandum of Understanding." Its purpose was to define "equitable compensation" as the term is used in the main agreement. Concerning the standard hourly wage rate based incentives, it provides that incentive wages shall be paid to

direct production workers when steel production in the strip mill exceeds a certain percentage of maximum possible output. It also provides that in the case of indirect non-production workers such as the plaintiffs, they shall receive 67% of whatever incentives the direct workers receive. I shall not go into the actual mechanics of calculation since I do not believe it is relevant to the motion before the Court. It is sufficient at this time to point out that BEN FISCHER, the chief contract negotiator for the UNITED STEELWORKERS OF AMERICA represented the plaintiffs herein and all other members of the UNITED STEELWORKERS OF AMERICA in negotiating all of the terms of said Memorandum of Understanding, and Mr. Fischer was examined under Oath concerning the incentive plan on April 20, 1971, in Pittsburgh, Pennsylvania.

10. In late 1959, five of the seven production units began filing grievances concerning their new standard hourly wage rate based incentive plan. The plaintiffs herein began receiving their required 67% of direct employee incentive earnings on April 17, 1960. At that time, therefore, they began their participation in the direct production incentives.

11. In similar fashion to the direct contributing units, the plaintiffs herein began filing similar grievances in June of 1960, complaining of the unfair and unequitable rates, which the new incentive system generated. The plaintiffs are entitled to 67% of the modifications, adjustments and retro-active payments which were made to production workers. The head of the payroll accounting department of the Lackawanna Plant was examined on July 9, 1969, and in his deposition beginning at Page 98 and extending to Page 102, he indicates that if the [illegible]

Affidavit of William D. Scott in Opposition to Motion of Both Defendants for Order for Summary Judgment.

avail ble, the electrical and mechanical a intenance workers would be entitled to 67% of the increases given to direct workers. The wages are included herein as Exhibit for reference of the Court. Mr. Rosser has been head of the Payroll at the Chevanna Plant for 21 years and has been with the Plant for 35 years. In his deposition beginning at Page 13, Mr. Rosser testifies to the fact that research for records was requested by his superior concerning records regarding the mechanical and electrical maintenance department. At Page 15 of his deposition Mr. Rosser makes the statement at line 2 "I think it is a known fact that retro-active has not been paid on this group." At Page 23 of his deposition, Mr. Rosser indicates that the 54 inch tandem mill was paid its retro-active in 1964 and that other units were paid in 1962 and on Page 24 of his deposition he indicates the time period involved was April of 1960 to June of 1962 on all of the retro-active payments. On Page 25 of his deposition Mr. Rosser states that the first search for records was made approximately June of 1966. His deposition indicates on Page 40 that four out of the five production unit retro-active payments were made between the years 1962 and 1964. Other records obtained on pretrial discovery such as the memorandum between G. I. BRYSON and J.S. FERGUSON dated November 15, 1966, indicates that the fifth production unit, the continuous picklers, were paid in 1966. During all of this time from 1962 to 1966 nothing whatsoever was paid to the plaintiffs herein . The memorandum referred to above is included herein for reference of the Court as Exhibit B.

12. It is the position of the plaintiffs that the union as their exclusive representative in contract matters and grievances with the company had an obligation in 1962, 1964 and 1966 to see to it that the plaintiffs were paid their share of the retro-active wages paid to production workers through the years.

13. The company in its motion papers for summary judgment indicates in the supporting affidavits that perhaps no monies whatsoever are due to the plaintiffs and that the offer that was made was obviously extremely generous. Yet in the memorandum between Mr. Bryson and Mr. Ferguson, such statements are made on Page 2 a of said memorandum as follows:

"The adjusted rates were affected retro-active to April 12, 1959, and payment made to 11 positions involved, excepting positions in the mechanical and electrical group."

"The incentive adjustment for the positions in the mechanical and electrical group were left unchanged and no retro-active payment was made to these people."

"We did not adjust the incentive adjustment for the mechanical and electrical positions by the inclusion of No. 2 lines production at this time, for reasons now unknown."

14. In referring to the continuous pickler grievance settlement on Page 5 of said memorandum, it is indicated that an offer of settlement was made and "the mechanical and electrical groups should properly participate in it."

15. On Page 6 of the memorandum, in summary it is stated that the possibility of accurately calculating "our retroactive obligation to the mechanical and electrical maintenance people at the strip mill is nil. The records necessary to accomplish this (with the exception of records for the 54 inch tandem mill and records for the hot and cold mill shipping portion of the mill

which have never been contested) are either insufficient or lacking entirely.

16. It is clear from a reading of this memorandum that the defendant, BETHLEHEM STEEL COMPANY, definitely has an obligation to pay to the plaintiffs an undetermined amount of money. Further, the only reason they are unable to do so at this time is because the necessary records have been lost, misplaced or destroyed.

17. It is interesting to note in the deposition of Mr. Rosser on Page 132 that the necessary records and worksheets which were lost would never in the normal course of events have left the Lackawanna Plant. In contrast to this is the statement on Page 117 of the March 3, 1969, deposition of GEORGE BRYSON, thechief of Industrial Engineering at the Lackawanna Plant where, through his counsel, the statement is made that records go to the central record-keeping location and that the loss could have occurred at shipment, storage, etc., but not necessarily at the Lackawanna Plant. I think it is clear from the deposition of Mr. Rosser that if these records are in fact lost or misplaced (and Mr. Rosser indicates that never in 35 years with the plant has such a thing ever happened before) that the loss definitely occurred in the Lackawanna Plant.

18. Mr. Rosser, as Chief of Payroll Accounting, knew very well what records he needed to compute the retroactive wage adjustment to the plaintiffs herein. Yet on Page 83 of his Deposition he is asked the following question:

"When you found you had lost your records in June of 1966, for the first time, could you have gone to Mr. Schamberger and asked

him to re-do this at that time to replace these records?"

A. If he would have had them I probably could have. I didn't.

Q. You did not go to him?

A. No

Q. You made no inquiry of him at all as far as duplicating these lost records again?

A. I don't think I did, but as I say I don't think he could have done it anyway.

Q. But you made no inquiry?

A. No

19. On Page 32 of the Rosser Deposition, Mr. Rosser indicates that following the discovery that the necessary records were lost, he reported it to his immediate superior, Mr. JAMES WOODHOUSE.

Q."Did you report this to Mr. Woodhouse?"
A."In this case I would have to say yes."

Q. You did answer-yes.

20. In the deposition of Mr. Woodhouse, taken July 28, 1970, at Page 23 he denies ever having spoken to Mr. Rosser concerning any lost records:

Q. And at no time up until you left there did David Rosser ever come to you and say certain records couldn't be found that were lost?

A. No sir.

Q. Okay. And you never instructed him to make a search for any records?

A. No

21. From the deposition of Mr. Rosser, it [redacted] that the records that are lost and that are [redacted]

calculation of the plaintiffs incentive wages are called "worksheets". These worksheets contain information that had been taken from the actual payroll records of the direct employees. The payroll records are kept for six years, and then destroyed. (Page 35) When Mr. Rosser discovered for the first time in 1966 that the necessary worksheets were gone, he could have contacted a record retention center in Pennsylvania to obtain the payroll necessary to re-do the worksheets. The payroll records are retained in Saylorsburg Retention Center for four years. On Page 117 of his deposition Mr. Rosser states that if he had the payroll records which were the basis for the worksheets, he could have computed the amount due to the plaintiffs in 1966. His only explanation for not sending to Saylorsburgfor the payroll records is that, "when we are talking about retroactives, you disgard anything that is almost impossible."

27. It appears from his testimony, that although the job would have been much more difficult using old payroll records instead of the missing worksheets, it could have been done in 1966 when his search was made, yet no effort was made to send to Saylorsburg for the missing records. (Page 118)

28. Mr. Robert V. Law, is the Chief Works Accountant at the Lackawanna Plant and is the Superior of Mr. Rosser. In the deposition of Mr. Law on June 19, 1969, he indicates on Page 43 that the normal procedure would be to send the records which were lost, misplaced to Pennsylvania after two years of retention at the plant level. He also indicates at Page 50 in his deposition that if records were missing at the plant level they would normally be sent for in Pennsylvania so that they could be returned and used

at the plant level to compute the retroactive payment necessary.

24. In summary, the testimony of Mr. Law, Mr. Rosser and the other Bethlehem Officials clearly indicates that an undetermined amount of money is due and owing to all of the 471 plaintiffs in this action. Further, that a search for missing records was supposedly made in June of 1966 by Mr. Rosser and that the necessary worksheets were not found in his office. That these worksheets should never under any circumstances have left Mr. Rosser's office, but that only the payroll records upon which the worksheets were based would be sent to Saylorsburg, Pennsylvania for a retention period of four years. That when Mr. Rosser discovered the absence of the records, he advised his superior, Mr. Woodhouse, and that he was given no further instructions from Mr. Woodhouse. Mr. Woodhouse in turn denies ever knowing or learning about any such lost records at anytime prior to the date he gave his deposition under oath. Mr. Rosser states that never in 35 years has he ever lost a record before and also states that he could have sent to Saylorsburg for the payroll records to reconstruct the missing worksheets but did not do so. In addition, he states he could have gone to the cost accounting department at the Lackawanna Plant and inquired as to whether or not they could reconstruct the worksheets but failed to do so. It is clear from the testimony of Mr. Law and Mr. Rosser that after a total retention period of six years, payroll records are destroyed as a matter of course in the Saylorsburg office. Yet at no time did anyone in 1966 when the missing records were discovered notify Saylorsburg not to destroy the necessary payroll records

involved, and as a result these payroll records, which could have been used to reconstruct the missing worksheets have been destroyed.

25. ARTHUR JARDIN, a former staff representative for the UNITED STEELWORKERS OF AMERICA was in charge of the handling of the plaintiffs two grievances referred to earlier in this affidavit. The plaintiffs grievances were number B-3139 and B-3141 and they applied to the electrical and mechanical maintenance workers who are the plaintiffs herein. At Page 19 of Mr. Jardin's deposition taken June 16, 1971, he indicates that at least a portion of his representation of the plaintiffs was done with "my tongue in my cheek." Further, he indicates that the only reason he was pushing the plaintiffs grievances to arbitration was because the plaintiffs wanted to arbitrate and not because he had any interest in doing so. In fact, when the case was arbitrated in November of 1964, Mr. Jardin was of the opinion that all remaining issues had been resolved. On Page 146 of the final arbitration hearing transcript, held November 18, 1964, Mr. Jardin in his opening statement to the impartial umpire states as follows:

"Mr. Umpire, these two grievances before you are combined. While they are two different departments, one is the electrical maintenance and the other the mechanical maintenance, the two rates are identical and they are paid the same way, off of the same units. .. in this case the units they are paid off of are not agreed to as yet; there are four or five units that have still got to be agreed to. But it is my understanding that when and if they are agreed to, that will reflect in the rate whatever they might get would reflect in this rate."

26. In other words, Mr. Jardin is saying that four or five production units which have filed grievances have not been resolved and that if and when they are agreed to any retroactive

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amounts paid will also be paid to the plaintiffs. It is the position of the plaintiffs that as international staff representative, charged with the duty of representing the plaintiffs in grievance procedures and of knowing what has gone on before and what has taken place regarding relating grievances, Mr. Jardin had an absolute obligation to inform the umpire at that time in November of 1964, that at least four out of five production grievances had already been resolved and retroactives had been paid. At the final arbitration hearing, the company simply reinterated its position stated many times before that "the company has made the statement on numerous occasions that as to the outcome of those rates, if they are changed, that the appropriate changes will be made in the rate in question. So it seems to me that this issue in regard to waiting for those rates to be settled is moot on the basis of that statement and that commitment by the company."

I have included a copy of the final grievance hearing transcript on November 18, 1964, for reference of the Court (Ex. C)

27. It is the position of the plaintiffs that not only did the defendant, BETHLEHEM STEEL CORPORATION have an obligation to make retroactive payments to the plaintiffs in 1962, 1964, and 1966, but that the defendant Union had an obligation to pursue the plaintiffs rights in a reasonably diligent fashion and see to it that they were paid along with the production units, or at the very least to be aware of the fact that production units had been paid and to make this fact known to the arbitrator who heard the plaintiff's case. Clearly, had the union diligently

worked for the plaintiffs herein, it is possible that the necessary records to compute retroactive payments due to the plaintiffs would not have been lost, misplaced or destroyed by the company, or at least would have been sent for or reconstructed before their destruction by the company. Because of the unions failure to see that the plaintiffs were paid, it is now impossible for the company to accurately state the amount due. In fact, up until May of 1966, the company would not even go so far as to admit that an obligation was due and owing.

28. The union had no right in June of 1964, when several of the production units had been paid off, to accept the statement on behalf of the company that "any adjustments which may be made in the incentives which would serve as components of the incentives involved here, will also apply to these incentives." (Joint incentive committee meeting June 2, 1964, attached hereto as Exhibit D) In fact, at that time in June of 1964, it was known by the union or certainly should have been known that both the hot mill proper and tandem mills had received their retroactive adjustment at least two years before with nothing having been paid to the plaintiffs.

29. It is interesting to note in the testimony of DAVID ROSSER, that the first search for records was made in June of 1966, and yet the offer of payment was presented to the plaintiffs in May of 1966 shortly before the commencement of this action at the Union Hall in the presence of your deponent and that at that time the statement was made in the presence of your deponent by IRVING TROST, a Union representative that "this is what the company says you have coming, and this is all you'll get."

This original offer is attached hereto as Exhibit E for reference of the Court.

30. In addition to the other facts recited herein, your deponent has discovered through pretrial depositions and other discovery proceedings that an agreement was entered into between the two defendants herein on or about May 15, 1961, concerning the hot mill proper and tandem mill production grievances. That in accordance with said agreement theunion was given until July 15 1961, to notify the company whether or not the proposed revisions and retro-active payments made through May 7, 1961, were acceptable to the union regarding those two contributing production units. That further, when a grievance relating to the hot mill proper and tandem mills reached the arbitration stage in November of 1962, the union was not at all satisfied to settle the grievances based on the previous proposed retroactives, but the arbitrator had no choice in the matter. He was required to find against the union and find the grievances untimely and to dismiss them because in fact the union had allowed the July 15, 1961, agreed deadline for objection to pass without taking any action. As a result of this, not only have the plaintiffs been deprived of their lawful share of the various retroactive payments made to production workers from 1962 through 1966, but in addition, due to the arbitrary manner in which those two production grievances were handled, even if the necessary worksheets were available, the amount paid to these production workers was never agreed to by the union and in fact was awarded by the arbitrator because of the unions default in failing to object to the award.

Mr. Jardin was also in charge of the handling of the above referred to hot mill and tandem mill grievances and on Page 24 and 25 of his deposition he admits the fact of their dismissal. I have attached hereto as Exhibit F the Decision of the Impartial Umpire in these two grievances dated May 23, 1963 by which they are dismissed for failure to take a timely Appeal.

31. The plaintiffs maintain that due to the "tongue in cheek" general handling of the production grievances as well as the plaintiffs own grievances by Mr. Jardin, that none of the grievances including the plaintiffs were ever decided by an umpire on their merits.

32. As an example of the attitude and arbitrary manner in which the plaintiffs have been represented by the Union, I have attached hereto a copy of the letter or memorandum entitled "REPORT BY BEN FISCHER ON RULES GOVERNING INCENTIVES AT BETHLEHEM STEEL UNDER JANUARY 4, 1960 AGREEMENT. This memorandum although unsigned, is dated March 7, 1960. A copy of the same is attached hereto for reference of the Court as Exhibit G. Ben Fischer is and was in 1960 the Chief Contract Negotiator for the United Steelworkers of America. A reading of his memorandum will show that it concerns the application of the new "standard hourly-wage rate" based incentives to direct workers as well as to the plaintiffs herein. In his memorandum, Mr. Fischer explains the meaning of the word direct vs indirect employees. In addition, he explains the fact that incentive wages will be earned for production in excess of 72½% maximum possible production. He defines these terms in his memorandum and goes on to say that indirect workers are

entitled to 67% of the direct incentives, giving examples as he goes along. Beginning on Page 4 of his memorandum, he discusses the May 25 agreement and the requirement that incentives be changed to comply with it. On Page 5 of his Memorandum, he indicates that on the average a production worker should earn "nearly 26% in earnings." (The longhand reduction in that figure appearing in the memorandum reflects the indirect workers share.) This is in effect saying that a production worker can expect to earn a 126% performance on a week-to-week basis, and that a non-production worker can be expected to earn 118.76% performance. In fact, very few weeks, if any, since the commencement of this action resulted in such incentive wages.

33. Mr. Fischer, being the chief contract negotiator is certainly responsible to the members of his Union for the contracts he negotiates and what is contained in them. At the time of his Deposition, in Pittsburgh, in April of 1971, Ben Fischer could not recall ever having seen the memorandum, denied any knowledge or expertise of any kind in incentive matters and claimed that one WILLIAM JACKO was the expert in such matters when this memorandum was prepared. Mr. Jacko, to no one's surprise, is now deceased. Mr. Fischer then goes on to state in his deposition that although he negotiated the January 4 Memorandum of Understanding requiring incentive wages to be paid over and above a certain percentage of maximum output, that the union had anticipated or designed no method whatsoever of policing this requirement and that in fact he as chief contract negotiator has no idea nor does anyone else in the union have any idea of what "72½% of maximum possible output means."

34. This memorandum was supplied to Union personnel and found its way into the hands of the rank and file workers. Their grievances claim that they are not earning sufficient incentives and if Mr. Fischer's memorandum is any indication of the truth, then they are correct. With regard to the claim the defendant, BETHLEHEM STEEL CORPORATION, that "the plaintiffs' claims have been finally determined and resolved in the grievance procedure and in arbitration." There is to be sure, a decision of the arbitrator dated July 12, 1965, which dismisses the plaintiffs grievances. A copy of this decision is attached hereto as Exhibit H for reference of the court. You will note in a reading of the decision that the umpire states, 'In each case management claims that in these proceedings all issued have been settled by the parties themselves and that nothing remains for the umpire to decide. The cases are here for a ruling on this claim."

The umpire then concludes that in fact all issues raised by the grievances have either been withdrawn by the union or settled by the parties themselves. For purposes of this motion, I refer the court only to subparagraph 4 of the umpire's decision which reads as follows:

4. "The claims relating to the level of earnings derived from the various component incentives were settled by the parties at a meeting of the joint incentive committee on June 2, 1964, upon the basis of a company statement that "any adjustments which may be made in incentives which serve as components of the incentives involved here will also apply to these incentives."

35. This was the grievance proceeding in which Mr. Jardin for the union made the statement in his opening brief that four or five units had not yet been paid retroactives and he agreed with the statements made by the company as quoted.

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16. The plaintiffs maintain that certainly if Mr. Jardin had properly heard all the plaintiffs grievances he would have informed the arbitrator of the fact of the long delay in paying the plaintiffs, at various stages in the grievance proceeding when the opportunity presented itself. That in any event there are clearly numerous questions of triable material fact in this action. Further, it is submitted by the plaintiffs that the defendants herein have failed on the face of their moving papers to show, on the record before the Court the lack of any triable Issue of Fact.

17. For the reasons stated herein, the plaintiff requests an order denying both motions for Summary Judgment upon the grounds that the defendants have failed to sustain the burden of clearly establishing the lack of any triable Issue of Fact as required, and that a triable Issue of Material Fact exists as to whether or not the Union breached its duty of fair representation to the plaintiff by their alleged arbitrary and perfunctory handling of the plaintiffs's grievances, and as to whether or not the defendant, BETHLEHEM STEEL, has a monetary obligation to the plaintiffs herein.

_____

Sworn to before me this

____ day of January, 1973

Exhibit A Attached to Affidavit of
William D. Scott.

98

sixty-seven percent of that performance.

BY MR. SCOTT:

Q. That is right, so that when these performances were given to you, to the Cost Accounting Department, the mechanical and electrical workers would be entitled, would they not, to that increase?

MR. RUSS: I object to the form of the question. It is the ultimate conclusion of the law suit.

MR. SCOTT: He can answer.

MR. RUSS: I made my objection because the question is improper.

Q. Strike that out and repeat.

BY MR. SCOTT:

Q. When the Cost Accounting Department gave you those, would the mechanical and electrical maintenance, as indirect workers, be entitled to sixty-seven percent of that increase?

H

Exhibit A Attached to Affidavit of
William D. Scott. 99

MR. RUSS: . . . Same objection, that conclusion
settlement without stating the facts, all the
was increa facts. The ultimate conclusion of
We got the law suit is the question you
already are asking now.
MR. SCOTT: Can you answer that question?
MR. RUSS: If you know. is a result of
THE WITNESS: All I can say is that the indirect
showed how people get sixty-seven percent of
A. the total performance.
Q. Whatever they increase the percent performance
BY MR. SCOTT:
Q. Well, you got worksheets from the Cost
Accounting Department for production workers;
is that right? received the sixty-seven
A. Right. of increase in their own pay, that
Q. Showing old and new? increase related to
A. Right.
Q. This was in 1964 or approximately there abouts?
A. Approximately, yes. sixty-seven percent?
Q. And the production workers percent performance
increased in accordance with whatever shows on
that worksheet; is that right?

Exhibit A Attached to Affidavit of
William D. Scott.

A. Well, through, the receipt of whatever settlement of the grievance the performance was increased.

Q. We got these worksheets, that grievance had already been settled; right?

A. Yes.

Q. Those worksheets showed you, as a result of whatever those negotiations took place, they showed how much was paid; right?

A. Right.

Q. Whatever they increased the percent performance by?

A. Right.

Q. The indirect workers under the contract at that time would have received the sixty-seven percent of increase in their own pay, that

BY MR. percent of performance increase related to

Q. their own income?

A. That is a method of calculation.

Q. They would have gotten sixty-seven percent?

A. If that was the method of calculation would they not, sixty-seven percent of that percent

Exhibit A Attached to Affidavit of
William D. Scott.

MR. RUSS: You asked the same question twice. There's no sense asking it again.

MR. RUSS: [illegible] sheets.

BY MR. SCOTT: [illegible]

Q. Those two percent performance figures, Mr. Rosser, the old and new figures for production workers concerning these four units, the difference between those two would be applied to the various pay periods concerned, '60 to '62 or whatever, '60 to '62, I think, and they would be paid an increase in their pay determined by applying that difference in percent performance; is that right.

MR. RUSS: If you know that, I said.

BY MR. SCOTT:

Q. The new percent performance?

A. Yes. [illegible]

Q. All right. Now, the indirect worker, the people that I represent, would get, would they not, sixty-seven percent of that percent performance increase? [illegible]

Exhibit A Attached to Affidavit of William D. Scott.

A. Yes, if we have the sheets.

MR. RUSS: If you have the sheets.

THE WITNESS: If we had the sheets.

BY MR. SCOTT:

Q. Now, if you take these weekly averages that we looked at before, you take these weekly averages for production units for the weeks concerned from April 1960 to June of 1962, would you be able from them to compute an adjustment for the indirect workers?

A. Well, I could.

BY MR. SCOTT:

MR. RUSS: An adjustment, he said.

No.

BY MR. SCOTT:

Q. If you were asked too?

A. I could give them an adjustment, but I don't think it would be fair.

Q. Why don't you think it would be fair?

A. Because I don't know whether it is old or new.

Q. Let's assume, for the minute, that those are old, the old percent-performance figures.

Exhibit B Attached to Affidavit of William D. Scott.

November 15, 1966

G. M. Bryson

J. S. Ferguson, Chief Industrial Engineer.

MECHANICAL AND ELECTRICAL MAINTENANCE
CONTINUOUS SHEET, STRIP AND PLATE MILLS.

NOV 16 1966

The attached 7 pages contain the history of each of the Incentive plans making up the New Plan Incentive for the Mechanical and Electrical Group at our Continuous Sheet, Strip and Plate Mills.

We have concluded from the data spelled out on these pages that an accurate application of rates to the production of these units for purpose of retroactive payment for the Mechanical and Electrical Group is impossible.

Attached also are charts showing the method we feel could be used to compute within a reasonable degree of accuracy such retroactive payment as is due.

Exhibit B Attached to Affidavit of William D. Scott.

Detailed below is the history of certain adjustments made to each of 5 of the 7 component parts of the New Plan Incentive established on 4-17-60 for Mechanical & Electrical Maintenance employees at the 79" Continuous Sheet, Strip & Plate Mills. The adjustments listed are only those necessitated by deficiencies in the plan involved and in no case the result of Article V-2c changes. Due to this any increase in performance resulting from the application of the adjustment had a direct bearing on the earnings of the Strip Mill - Mechanical & Electrical group.

Hot Mill Proper

A New Plan Incentive was established for this unit on May 3, 1959. On October 12, 1960, the unit was put on an interim rate basis of pay due to the installation of 3 new Coilers. This basis of payment was terminated on 1-29-61 by the application of a revised rate based on the 72½% formula. The revised rate was applied retroactive to 12-20-60 for the Mill people only. This action was the result of an agreement made with the Union on or about 12-20-60 (Refer to letter from W. G. Smith to J. H. Woodhouse, dated 5-10-61, Subject: 79" Continuous Sheet, Strip & Plate Mill). Although the rate change recommendation effecting the 98% formula for the contribution of the Hot Mill proper to the Incentive Plan for the Mechanical & Electrical group show an effective date of 12-20-60, the rate for these people actually became effective 1-29-61 without any retroactive application. On May 7, 1961, due to certain deficiencies in the rate (Controlled temperature rolling, Allowance minutes for start up turns after scheduled repair turns) adjustments were made to the Incentive. These adjustments were applied to the test period for each position paid Incentive based wholly or partially on the performance of the Hot Mill proper and an appropriate revision was made to the I.A. of each position involved, including positions in the Mechanical & Electrical group.

Exhibit B Attached to Affidavit of William D. Scott.

The revised rate was retroactive to 5-3-59 for the Mill people only, and although the I.A. for each position in the Mechanical & Electrical group was affected, the new rate was applied on a then current basis for these people i.e. 5-7-61. Subsequent to 5-7-61, not any changes were made to the Incentive for the Hot Mill proper because of deficiencies in the original rate. The propriety of the rate was finally upheld in arbitration by imparital umpire, Ralph Seward (See Decision #385).

It is impossible to apply the revised rates for the Hot Mill proper for the period 4-17-60 through 5-\$7-61. Many of the production reports and records used to compute the retroactive obligation for the Mill people have been mislaid and to date, after an exhaustive search by the Accounting Department, have not been found.

54"-75" Tandem Mills

New Plan rates were effected for these units on 4-12-59. The rate applicable to the 75" Mill was agreed to by the Union in the 3rd step of the procedure. However, the 54" Mill crew and certain people paid incentive based on the production of both the 54" and the 75" Mills initiated grievances protesting the propriety of the 54" Mill rate. Again, as in the case of the Hot Mill proper, adjustments were made on 5-7-61 due to certain deficiencies in the rate (erroneous old plan test period earnings, increased rate for processing application material and addition of an allowance for start up turn after a repair turn.) The revised rates were applied to the test period for positions paid Incentive base wholly or partially on the production of the 54" Mill and an appropriate I.A. developed for each position involved, including positions in the Mechanical & Electrical group.

Exhibit B Attached to Affidavit of William D. Scott.

The adjusted rates were effected retroactive to 4-12-59 and payment made to all positions involved, excepting positions in the Mechanical & Electrical group. Subsequent to 5-7-61, no other corrections were made to the 54" Mill rate which, like the Hot Mill proper, was upheld in arbitration by impartial umpire, Ralph Seward (Decision #865).

The incentive rate in effect on 5-7-61 for the 54" Tandem Mill could properly be applied retroactive to 4-17-60 for the purpose of computing what monies, if any, are due the Mechanical & Electrical employees at the Strip Mill. Since the Accounting Department has furnished us with the work sheets used to calculate the retroactive payment made to employees paid incentive based solely on the performance of the 54" Mill, this move should present no special problem.

#2-3-5 Coil Skin Mills

New Plan Incentives for these units were effected on April 10, 1960. On 6-11-61 the rates were revised to include a rate to "Set up Mill for rewind and an increase in the allowed time for coil entry when processing rewind material". These adjusted rates were applied to the test period for the Mill people only to arrive at an appropriate I.A. for each mill position involved. The new rates were applied retroactive to 4-10-60 for the mill positions and monies due because of this application paid. The I.A. for positions in the Mechanical & Electrical group were left unchanged and no retroactive payment was made to these people.

On June 10, 1962, the rates were again adjusted because of certain other deficiencies uncovered in the original rate. (Revised rate for Coil Entry when processing ship coils, cut out weld coils and rewind coils - a revised rate per foot rolled when processing rewind material.)

The revised rates, which were upheld by impartial umpire, Ralph Seward (Decision #886) were applied to the test period for all positions paid Incentive based wholly or partially on the production of the Coil Skin Mills

and the I.A. for each position involved, including positions in the Mechanical & Electrical group, was appropriately adjusted. The new rates were applied for the period 4-10-60 through 6-10-62 and retroactive payment made to all positions involved, excepting the positions in the Mechanical & Electrical group.

A check with the Accounting Department showed that an accurate calculation of any retroactive monies due the Mechanical & Electrical group by application of the new rates would be virtually impossible. Many production and payroll records for the period 4-17-60 through 6-10-62 are missing and as of this writing have not been found.

Coil and Sheet Annealing

New Plan Incentives were effected for these operations on 11-29-59. On March 4, 1962, the Plans were revised by changing them from direct incentive to indirect incentive and by guaranteeing 100% performance for the annealing cycle of each charge. The revised Plans were applied to the test period for the annealing positions and appropriate I.A. developed for where warranted. The incentive contribution from annealing operations to the Electrical & Mechanical group continued to be based on the original plan with no change in I.A. for any position in that group until 6-10-62. On that date the I.A. of each position in the Mechanical & Electrical group was adjusted by the application of the revised annealing plan as well as the rates for #2-3-5 Skin Mills, which were revised on 6-10-62.

On 7-26-64, the annealing Plans were again revised predicated on a recommendation from the Joint Incentive Committee. The revision merely changed the method of payment for the annealing positions from one based on the production of each of the various groups of annealing furnaces, to one based on the combined production of all the groups of furnaces. Since the revised plan was designed to at least equal the then current earnings of each annealing position it was necessary to adjust the I. A. for certain

of the positions involved. Since this was merely a change in the method of payment, the I.A. for positions in the Mechanical & Electrical group were left unchanged. Subsequent to 7-26-64, no further changes were made to the original annealing plan and on 2-14-66 the grievance protesting the propriety of the Plans for this operation was withdrawn from the procedure by the International Union Staff Representative.

Again the lack of necessary production reports and records preclude the possibility of accurately computing what monies, if any, are due the Mechanical & Electrical group by virtue of changes to this Plan.

#1-2-3 Continuous Pickler

New Plan Incentives were established for these units on 2-28-60. The I.A. for the operating positions on #1 Line and on #3 Line was based on the actual performacne of each these lines during the test period. The I.A. for the operators on #1 Line was applied to the operators on #2 Line, and the I.A. for positions used to service all three lines (crane operator, hookers, etc,) were predicated on the production of #1 and #3 Lines only. The logic behind computing the I.A. for the service group on the production of #1 and #3 Lines was that #2 Line, which was on an interim rate during the test period, would after the installation of an active incentive at least equal the average of the performances of #1 and #3 Lines. This failed to materialize and on or about 4-27-60, we revised the I.A. for these people by applying the new rate for a period from 12-20-59 through 3-19-60 for #1, #2, and #3 Lines and comparing it with the earnings actually received under the old plan for the service group for this same period. We did not adjust the I. A. for the Mechanical & Electrical positions by the inclusion of #2 Lines production at this time, for reasons now unknown. On 6-14-60, we revised the plan for all three lines by taking into consideration certain delays omitted in the original rate and by correcting the entry speed on #3 Line from a maximum speed of 900 feet per minute to a maximum speed of

Exhibit B Attached to Affidavit of William D. Scott.

800 feet per minute on narrow material and a maximum speed of 750 feet per minute on wide material. The new rates were applied to all positions paid Incentive based wholly or partially on the production of the pickle lines and an appropriate adjustment of the I.A. was made to each position involved, except positions in the Mechanical & Electrical group. The I.A. for these positions, when computed including #2 Line production as well as the revisions of 6-14-60, would have been reduced approximately .002 per hour for the lead position and on that bases we decided to leave it unchanged.

Subsequent to 6-14-60 the rates for each of the three lines were revised to reflect certain Article V-2c changes. No. 2 pickler was revised effective 4-21-63; No. 3 effective 8-9-64, and No. 1 effective 10-25-64. The propriety of the revised rates was not challenged by the Union. Also subsequent to 6-14-60 up to the effective date of the revised rates we recognised no further deficiencies in the original rates. The Union continued to process grievances pertinent to the original rates on all three lines up to 4½ step of the procedure. On July 8, 1966, in a meeting of the joint incentive committee, the only issue remaining unresolved was the properness of the rate for processing Hot Roll pickle material on #1 Line. At this meeting the company in an attempt to settle the grievance, arbitrarily offered to pay .025 per hour worked for the period from 2-28-60 through 10-24-64 all employees assigned #1 pickling line and .00833 per hour worked for the same period to employees in the pickling service group. Indications are the Union will accept this offer. Although this offer of settlement was by no means a concession on our part that the rate for processing Hot Roll pickle materila was defective, the Mechanical and Electrical groups should properly participate in it. This can be accomplished by using 67% of the .025 per hour offered the people on #1 Line and applying the 15% contribution of the pickle lines to that

figure. The resultant figure would then have to be adjusted by the percent of time #1 pickle line operated for the retroactive period with respect to the total time operated by all three pickle lines for the same period.

It should be noted that in an informal meeting with the President and Chief Grievance man of Local #2604, we idicated that based on our offer the Mechanical & Electrical people would probably be entitled to something in the neighborhood of .0025 per man hour. However, we said we would discuss this further when our problem with these people was fully aired.

In summary, the possibilities of accurately calculating our retroactive obligation to the Mechanical & Electrical maintenance people at the Strip Mill is nil. The records necessary to accomplish this (with the exception of records for the 54" Tandem Mill and records for the Hot and Cold Mill Shipping portions of the plan which have never been contested) are either insufficient or lacking entirely. We are convinced the only logical way to arrive at the proper amount due the Mechanical & Electrical group for the retroactive period is to compare the average earnings received by this group for the period starting with effective date of the contested rate (4-17-60) up to the date the last of the 5 contributing units was revised by virtue of deficiences in the New Plan rate for that unit, (6-10-62 - #2-3-5 Coil Skin Mills) with actual earnings received by this same group for the period from 6-10-62 up to 5-21-66.

This we have done by using the arithmatical average IOPP of the plan for the two periods and applying the difference between the two IOPP's together with the appropriate I.A. to Millwright position. This resulted in an actual increase in earnings per hour of .043 for the period 6-10-62 through 5-21-66, when compared to the earnings per hour for the period 4-17-60 through 6-9-62. We then determined the percent of the Millwright S.H.W.R. as of 10-1-61 the .043 represented and applied that percent to the classification of all positions involved to arrive at the retroactive

Exhibit B Attached to Affidavit of William D. Scott.

rate per hour due each position. Although the period 4-17-60 through 6-9-62 included a change in S.H.W.R., all calculations were based on the S.H.W.R. as of 10-1-61. Since for the period from 4-17-60 through 9-30-61, the S.H.W.R. of all the employees involved was less than it was as of 10-1-61, this is slightly to their benefit. (See attached Chart "A").

An alternate and perhaps more accurate way of computing our retroactive obligation in this case would be to weight the IOIP and I.A. for the periods involved by the hours actually worked by each position. An illustration of the results of a move in this direction for several representative positions is illustrated on Chart "B".

Class A

Sheet 1 of 1

BETHLEHEM STEEL CORPORATION

LACKAWANNA PLANT

Continuous Sheet, Strip & Plate Mills - Electrical Maintenance - Retroactive Payment Offer

Retroactive Period - 4-17-60 through 6-9-62

Position	S.H.W.R.	Retroactive Amount Per Hour (S.H.W.R. x .0146*)
General to Hot & Cold Mills		
Motor Room Operator	$2.940	.043
Motor Room Attendant "A"	2.800	.041
Motor Room Attendant "B"	2.660	.039
Motor Room Attendant "C"	2.520	.037
Motor Room Attendant Helper	2.380	.035
Crane Millwright (Millwright "A")	2.940	.043
Crane Repairman "A" (Millwright "B")	2.800	.041
Crane Repairman "B" (Millwright "C")	2.660	.039
Crane Repairman "C"	2.520	.037
Crane Repairman Helper	2.380	.035
Crane Oiler	2.380	.035
Motor Inspector (Motor Insp. "A")	2.940	.043
Elect. Rep. "A" (Motor Insp. "B")	2.800	.041
Elect. Rep. "B" (Motor Insp. "C")	2.660	.039
Elec. Rep. Inman "C"	2.520	.037

Position	S.H.W.R.	Retroactive Amount Per Hour (S.H.W.R. x .0146*)
Electrical Helper	$2.380	.035
Electrical Oiler	2.380	.035
Automotive Mechanic	2.940	None ø

Note: Positions in parentheses are those created by Craft Changes (1-1-66)

ø Position effective as of 1-1-66.

Exhibit B Attached to Affidavit of William H. Scott

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BETHLEHEM STEEL CORPORATION
- Lackawanna Plant -

Continuous Sheet, Strip and Plate Mills - Mechanical and Electrical Maintenance - Retroactive Payment Offer

* Method used to calculate factor of .0146

$$\frac{C - B}{A} = \frac{3.408 - 3.365}{2.940} = \frac{.043}{2.940} = .0146$$

A = S.H.W.R. (as of 10-1-61) of Millwright (Millwright "A") position = 2.940

B = Average earnings per hour of Millwright (Millwright "A") position for retroactive period from 4-17-60 to 6-9-62.

Year	Qtr.	Maintenance Performance	Number of Weeks	I.A. Adjusted to 10-1-61 Rates	Earn./Hour Adjusted to 10-1-61 Rates
1960	2	108.27*	9		
1960	3	107.40	14		
1960	4	105.99	13		
1961	1	107.25	13		
1961	2 end.5/6	110.55	6		
Weighted Average 4-17-60 to 5-6-61		107.52		.182	3.343
1961	2 st.5/7	109.23	7		
1961	3	107.88	13		
1961	4	111.34	13		
1962	1	110.97	13		
1962	2 end.6/9	106.27	11		
Weighted Average 5-7-61 to 6-9-62		109.23		.176	3.387
Weighted Average 4-17-60 to 6-9-62					3.365

C = Average earnings per hour of Millwright (Millwright "A") position for period from 6-10-62 to 5-21-66.

Year	Qtr.	Maintenance Performance	Number of Weeks	I.A. Adjusted to 10-1-61 Rates	Earn./Hour Adjusted to 10-1-61 Rates
1962	2 st.6/10	104.81	2		
1962	3	108.52	13		
1962	4	110.62	13		
1963	1	109.81	13		
1963	2	111.20	13		
1963	3	107.91	13		
1963	4	110.23	13		
1964	1	110.94	13		
1964	2	110.67	13		
1964	3	109.70	13		
1964	4	110.03	14		
1965	1	110.93	12		
1965	2	111.94	13		
1965	3	109.09	13		
1965	4	108.49	14		
1966	1	113.35	12		
1966	2 end.5/21	113.89	9		
Weighted Average 6-10-62 to 5-21-66		110.31		.165	3.408

Note: Position in parentheses was created by craft changes of 1-1-65.

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Exhibit B Attached to Affidavit of William D. Scott

BETHLEHEM STEEL CORPORATION
- Lackawanna Plant -

Cl. # 6

Continuous Sheet, Strip and Plate Mills-Mechanical Maintenance - Retroactive Payment Offer
Retroactive Period - 4-17-60 through 6-9-62

Position	S.H.W.R.	Retroactive Amount/Hour (S.H.W.R. x .0146*)
General to Hot & Cold Mills		
Millwright (Millwright "A")	$2.940	$.043
Mech. Repairman "A" (Millwright "B")	2.800	.041
Mech. Repairman "B" (Millwright "C")	2.660	.039
Mech. Repairman "C"	2.520	.037
Mechanical Helper	2.380	.035
Welder "A"	2.940	.043
Welder "B"	2.800	.041
Welder "C"	2.660	.039
Storekeeper Shop	2.170	.032
Tractor Operator	2.450	.036
Oiler & Greaser Leader	2.800	.041
Oil System Man	2.660	.039
Oil System Man Helper	2.380	.035
Oiler and Greaser	2.380	.035
Oiler and Greaser Helper	2.240	.033
Bearing Machinist	$3.010	$.044
Bearing Machinist Handyman	2.450	.036
Bearing Repair Helper	2.380	.035
Bearing Changer Machine Operator	2.380	.035
Bearing Changer	2.520	.037
Bearing Changer Helper	2.310	.034
Roll Bearing Washer	2.100	.031
Shear Blade Supplyman	2.590	.038
Shear Blade Supplyman Helper	2.240	.033
Rubber Vulcanizer	2.730	.040
Automotive Maintenance		
Automotive Mechanic	2.940	.043
Automotive Repairman "A"	2.800	.041
Automotive Repairman "B"	2.660	.039

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Exhibit B Attached to Affidavit of William D. Scott.

BETHLEHEM STEEL CORPORATION
- Lackawanna Plant -

Continuous Sheet, Strip and Plate Mills - Mechanical Maintenance - Retroactive Payment Offer

Retroactive Period - 4-17-60 through 6-9-62

Position	S.H.W.R.	Retroactive Amount/Hour (S.H.W.R. x .0146*)
Automotive Maintenance (Cont'd)		
Automotive Repairman "C"	$2.520	$.037
Automotive Repairman Helper	2.310	.034
Automotive Greaser	2.310	.034
Machine Shop		
Craftsman	2.520	.037
Machinist Leader	3.220	.047
Machinist "A"	3.080	.045
Machinist "B"	2.940	.043
Machinist "C"	2.800	.041
Machinist Helper	2.310	.034
Shear Blade Grinder	2.450	.036
Rotary Surface Grinder	2.450	.036
Machine Operator "A"	2.660	.039
Machine Operator "B"	2.520	.037
Machine Operator "C"	2.380	.035
(Millwright "A")	2.940	None ø
Mech. Repairman "A" (Millwright "B")	2.800	.041
Machine Shop (Cont'd)		
Mech. Repairman "B" (Millwright "C")	$2.660	$.039
Mech. Repairman "C"	2.520	.037
Blacksmith "A"	3.010	.044
Blacksmith "B"	2.870	.042
Blacksmith "C"	2.730	.040
Blacksmith Helper	2.380	.035

Note: Positions in parentheses are those created by craft changes (1-1-66).

ø Position effective as of 1-1-66 due to craft changes.

Exhibit B Attached to Affidavit of William D. Scott.

Continuous Sheet, Strip and Plate Mills - Mechanical and Electrical Maintenance - Retroactive Payment Offer

* Method used to calculate factor of .0146

$$\frac{C - B}{A} = \frac{3.408 - 3.365}{2.940} = \frac{.043}{2.940} = .0146$$

A = S.H.W.R. (as of 10-1-61) of Millwright (Millwright "A") position = 2.940

B = Average earnings per hour of Millwright (Millwright "A") position for retroactive period from 4-17-60 to 6-9-62.

Year	Qtr.	Maintenance Performance	Number of Weeks	I.A. Adjusted to 10-1-61 Rates	Earn./Hour Adjusted to 10-1-61 Rates
1960	2-	108.27%	9		
1960	3	107.40	14		
1960	4	105.99	13		
1961	1	107.25	13		
1961	2 end.5/6	110.55	6		
Weighted Average 4-17-60 to 5-6-61		107.52		.182	3.343
1961	2 st.5/7	109.23	7		
1961	3	107.88	13		
1961	4	111.34	13		
1962	1	110.97	13		
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Weighted Average 5-7-61 to 6-9-62		109.23		.176	3.387
Weighted Average 4-17-60 to 6-9-62					3.365

C = Average earnings per hour of Millwright (Millwright "A") position for period from 6-10-62 to 5-21-66.

Year	Qtr.	Maintenance Performance	Number of Weeks	I.A. Adjusted to 10-1-61 Rates	Earn./Hour Adjusted to 10-1-61 Rates
1962	2 st.6/10	104.81	2		
1962	3	108.52	13		
1962	4	110.62	13		
1963	1	109.81	13		
1963	2	111.20	13		
1963	3	107.91	13		
1963	4	110.23	13		
1964	1	110.94	13		
1964	2	110.67	13		
1964	3	109.70	13		
1964	4	110.03	14		
1965	1	110.93	12		
1965	2	111.94	13		
1965	3	109.09	13		
1965	4	108.49	14		
1966	1	113.35	12		
1966	2 end.5/21	113.89	9		
Weighted Average 6-10-62 to 5-21-66		110.31		.165	3.408

Note: Position in parentheses was created by craft changes of 1-1-66.

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Exhibit B Attached to Affidavit of William D. Scott.

Exhibit B Attached to Affidavit of
William D. Scott.

BETHLEHEM STEEL CORPORATION
- Lackawanna Plant -

122 - Department, Strip Mill Mechanical, Premium Positions

Class "F"

Straight Average Factored at .0266

Week Ending Period	S.H.W.R. - (2.580) Incentive Earns./Hour Mech. Helper General	(2.600) Incentive Earns./Hour Mech. Repairman "A"	(2.960) Incentive Earns./Hour Millwright General
4-23-60 to 6-9-62	-	-	3.365
6-16-62 to 5-21-66	-	-	3.408
Difference per hour	.035	.041	.043

Weighted Average Unity Position Hours and Incentive Earnings

4-23-60 to 6-9-62	2.696	3.191	3.512
6-16-62 to 5-21-66	2.732	3.229	3.411
Difference per hour	.036	.038	.039
Total difference weighted versus straight average	+.001	-.003	-.004

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Exhibit C Attached to Affidavit of William D. Scott.

B/B/1.

In the Matter of the Arbitration

- between -

BETHLEHEM STEEL COMPANY

- and -

UNITED STEELWORKERS OF AMERICA
Local Union No. 2604

Lackawanna Plant
Lackawanna, N. Y.
November 18, 1954

Before:

RALPH T. SEWARD, Esq., Impartial Umpire

Appearances:

GEORGE A. MOORE, Jr., Esq., Arbitration Attorney
PAUL W. WAGNER, Assistant Management's Representative
John R. Jackson, Assistant Plant Industrial Engineer
J. W. Allen, Industrial Engineer

GERTRUDE A. NIEDERER
REPORTING SERVICE
TELEPHONE MURRAY HILL 7-4210
224 EAST 38TH STREET
NEW YORK 16, N. Y.

Exhibit C Attached to Affidavit of William D. Scott.

L. W. Stall, Assistant Superintendent, Blooming Mills

For the Management

ARTHUR J. JARDIN, Staff Representative
IRVING TROST, Top Grievance Committeeman
JAMES LAFFERTY, Top Grievance Committeeman
Walter Bigaj, Assistant Grievance Committeeman
S. Garbatowicz
J. Womeldorf
W. Swiercz
L. Brzyski

For the Union

* * * * *

[The entire morning of Wednesday, November 18, 1965, was spent in negotiations.]

Exhibit C Attached to Affidavit of William D. Scott.

Wednesday Afternoon
November 18, 1954

[The hearing convened at 3:30 p.m. o'clock, with the same appearances as noted for the morning session.]

* * * * *

GRIEVANCES NOS. B-3139 and B-3141

THE UMPIRE: O.K., gentlemen?

MR. MOORE: Mr. Umpire, the next grievances for discussion are Grievances Nos. B-3139 and B-3141.

These grievances have been discussed together by the parties throughout the grievance procedure, and therefore will be handled that way during this hearing.

At this time I would like to submit as Company's Exhibit 16 a copy of the grievances, Nos. B-3139 and B-3141, and the numerous Step 3 and Step 4 minutes pertaining thereto.

[The grievance records of Grievances Nos. B-3139 and B-3141 were received and marked Company Exhibit No. 16.]

MR. MOORE: There are also some additional minutes pertaining to this case. These are the minutes from the meeting

from the meeting of the Joint Incentive Committee of June 2, 1964, dealing with these as well as other grievances in particular. Page 3 deals with the grievances in question. I would like to submit a copy of those minutes as Company's Exhibit No. 17.

[Copy of minutes of Joint Incentive Committee of June 2, 1964, was received and marked Company Exhibit No. 17.]

MR. MOORE: That is all the Company has at this time, Mr. Umpire.

THE UMPIRE: Arthur?

MR. JARDIN: Mr. Umpire, these 2 grievances before you are combined. While they are 2 different departments, one is the Electrical Maintenance and the other the Mechanical Maintenance, the 2 rates are identical and they are paid the same way, off of the same units.

The Union has a complaint here similar to the one we had in an auxiliary group on the Skin Mills, which unfortunately you could not see our way.

In this case the units they are paid off of are not agreed to as yet; there are 4 or 5 units that have still got to be agreed to. But it is my understanding that when and if they are agreed to, that will reflect in the rate, whatever they might get would reflect in this rate.

However, the ones that are agreed to, it must follow that as a matter of fact if they are agreed to or have been arbitrated and decided, that that must be the proper rate for those units, they can very well be getting the proper rate but the people paid off of them may not be getting the proper rate.

We have no way of knowing the minute breakdown of a rate, all the component parts that go into these rates. The Company can and has in other auxiliary groups figured their rates so tight, or so close--as we call it--that they are making less money. I know you can't use the earnings before the new rate, but they are making less than they were in the representative test period.

The brutal part of the Arbitrator's thinking in these May 25th cases is that so long as they have a test representative period of some period of time, and the Company has figured the rate both ways and have come out even in that period of time, that there is no case--regardless of how much less they are earning, or how much more. What they are earning now means nothing to an Arbitrator, because he says that the rate must be paid because the 13 weeks are figured both ways. But I don't know whether they figured it right in the 13-week period. I have no way of knowing whether they made an honest mistake in their figures when they said that the pay came out the same.

Exhibit C Attached to Affidavit of William D. Scott.

And the men working under the rate have no way of knowing.

There is only one way that a man knows that he is getting his proper rate of pay for what he is doing, and that is his pay check which he gets on a Friday. If he is producing the same as he has produced before, and he is coming up with somewhat less money, then there is something wrong with that rate.

Sure, these Industrial Engineers, they can show you figures where, on paper, they should get it. But unfortunately, these people can't spend that paper; they spend what they get in their pay check on payday. And the Industrial Engineers are out on Cloud Nine 9/10 of the time anyway.

I will admit that figures don't lie, but as the cliché goes, liars figure.

How this can be resolved right at this moment I am at a loss to say. And I cannot say whether these figures are correct that the Company has said are right in the test representative period, that the new rate is equal to the old rate. The only proof we have of that ever since this rate has been in effect is that these people have not been able to reach the test representative period. They have been consistently below it.

I will be the first to admit that an incentive rate

fluctuates. You don't have a stagnant incentive; it is a fluctuating rate.

But when a rate fluctuates downward all the time, there must be something wrong with it. Unfortunately I can't prove to you through breakdowns where this rate is wrong, but I am saying that this rate has to be wrong, due to the amount of money these people are receiving as compared with what they should have received even by the Company's own figures in the test representative period.

So if these other units are being paid right, and they are making as much money as they made before, it should necessarily follow that the people getting paid off the units should be making as much. Because these people cannot control production. Oh, they could, I suppose, if they took a little too long to repair machinery, for example, or something like that, but there has been no complaint on the part of the Company that they are controlling production.

So I say that these people cannot control it. If the units that do control it are doing all right, then the people that are paid off it, it should follow, must do all right. But by the Company's own figures they are not doing all right.

I know what Mr. Moore has in mind when he introduces Company Exhibit 17. That is the 4-1/2 Step meeting held con-

cerning these grievances, held in Bethlehem or Pittsburgh, or someplace. It was attended by Jack O. Frey and William Theis for the Union, and Barnahm, Fenninger and Ferguson for the Company.

Then there were the 2 so-called Incentive Committees, by so-called experts. And they have a very concise report to make. They merely wind up by saying there is no remaining issue in these grievances.

In their opinion, maybe there isn't. But at the local level--which we are at now--we say there are issues remaining. There are the issues of the man's pay check, and that is the biggest issue that I can think of.

I guess just because there are Industrial Engineers connected with it,--there must be to give that kind of an answer. They say there are no issues, and we say there are issues. And that is the reason we are here before you today, to seek some relief.

We say these people do have a complaint. They have got a just complaint. And again I have got to repeat, if these other units are paying off--and they must be, because these things have been either agreed to or arbitrated and settled--then the people getting paid off those units should be getting as much as they made during the test representative period.

And if they aren't, there has got to be something wrong with that rate.

That is all I have to say right now, George.

MR. MOORE: Mr. Umpire, first and foremost before we get into the merits of the grievance at all, there is the issue concerning the sanctity of the grievance procedure.

This grievance has been through at least four Step 3 meetings and several Step 4 meetings, in which there has been a refining of the issues as you trace through the steps of the procedure.

The grievance after coming to arbitration was remanded for the sole purpose, as I understand it, of awaiting the settlement of several rates on contributing plans.

The Company has made the statement on numerous occasions that as to the outcome of those rates, if they are changed the appropriate changes will be made in the rate in question.

So it seems to me that this issue in regard to waiting for those rates to be settled is moot on the basis of that statement and that commitment by the Company.

The past representative test period issue, which I believe is the only issue that can be remaining here, was withdrawn as indicated by the Step 3 minutes of August 9, 1963, as

indicated by the Step 4 minutes of October 1, 2 and 3, 1963, and as further indicated by the Step 4-1/2 minutes, Company's Exhibit 17, which has been presented to you, and as stated in the final document filed in this case which is the Union's pre-hearing brief, which was dated March 25, 1964.

Now, I take it that when the parties set up the Joint Incentive Committee they fully expected that committee to have power to withdraw grievances, to settle grievances, to compromise grievances, to make changes in incentive plans. And in this instance these 2 grievances went to that committee.

That committee, composed of the top Industrial Engineering people from the Company and from the Union, in addition to one of our Assistant Vice-Presidents from the Company, Mr. Fenninger, after reviewing thoroughly these 2 grievances clearly states--both in agreement and signed by all parties--that there are not any issues in these grievances.

Now, if there are not any issues in these grievances, and if that is what it means--and that is what it says--then there is nothing to arbitrate and there are no issues before the Umpire.

MR. JARDIN: If what Mr. Moore is saying is true, we would not be sitting here today or even talking about this.

I do not deny the fact that these so-called experts,

as I call them, did agree that there are no remaining issues in this case. That is printed and was signed by the parties. I can't deny that.

But if their authority was so powerful, and if they had the authority to say that these were settled for all intents and purposes, we could not be sitting before you.

However; the Union and the Company have agreed that these cases could be arbitrated. And that is the only reason we are here before you today, because the parties agreed that they could be arbitrated even in the face of those 4-1/2 Step minutes.

I will be the first to admit that they probably carry a lot of weight, themembers of that committee, but I am also saying they do not foreclose us from arbitrating.

MR. MOORE: I take decided issue with Mr. Jardin's analysis. All the Company said in this connection was, "You can go ahead and assert your right to appeal."

We did not agree that there was anything to appeal. And the mere fact that the procedure was followed to get the cases here does not mean that there is anything for the Umpire to take jurisdiction over.

If the Joint Incentive Committee is as Mr. Jardin has described it, then it seems to me it is nothing but a dis-

Exhibit C Attached to Affidavit of William D. Scott.

cussion group.

THE UMPIRE: Let me ask 2 questions. As I understand it, these incentives were installed pursuant to the May 25th Agreement.

MR. MOORE: Correct.

THE UMPIRE: Did they involve technological changes each time? Or was it a pure substitution of a standard hourly rate incentive?

MR. MOORE: Pure substitution.

MR. JACKSON: Pure substitution.

THE UMPIRE: If the appeal of this grievance to arbitration has meaning in spite of the action of the Joint Incentive Committee, it means that I cannot appropriately ask these questions. Has the issue relating to the past representative test period been withdrawn?

MR. MOORE: It has. I base that upon at least 4 situations. One is the remand at the time the case was in arbitration.

Secondly, the next set of Step 3 minutes, August, 1963, where the issue was not raised.

Thirdly, the meeting of October 1, 2 and 3, 1963, where it was not raised.

Next, the 4-1/2 Step minutes which you have before

you, which clearly state that that issue was withdrawn.

And finally the Union's pre-hearing brief, the first paragraph under Union's Position, which was dated March 25 of 1964. It finishes up the first paragraph on the bottom of page 1, and continues to page 2.

The next to the last sentence reads, "There has been a change in the conditions of the Union since this case was in arbitration, and those changes are that the Union has now dropped their condition of the indirect worker and also has dropped their objections to the test representative period."

THE UMPIRE: Where are you reading?

MR. MOORE: The Union's pre-hearing brief on Grievance B-3141, page 2, the next to the last sentence of the paragraph which is continued from page 1.

THE UMPIRE: I see it now.

MR. MOORE: So even aside from the Joint Incentive Committee, which of course I believe has the final word in refining the issues, aside from that the local level brief's last statement in this regard clearly states that the issue upon which these grievances are based has been withdrawn, not only as far as the indirect worker but as far as the representative test period is concerned.

THE UMPIRE: If the past representative test period

Exhibit C Attached to Affidavit of William D. Scott.

issue and the question of the direct or indirect worker has been withdrawn and is no longer before us, I cannot see what there is that I have authority to arbitrate at this point, Arthur.

MR. JARDIN: Even assuming that the Company attorney is correct--and it would appear to me from the evidence that he probably is on the test representative period--I say the issue has not been resolved. It never has been resolved. If we are going to take incentive cases to arbitration, and the only thing we can resolve them on is the test representative period, the right period whether it was used or not, we have no other issue and there is no reason for us ever taking any incentive to arbitration. Because I don't care what test representative period they pick out. If they have not figured it right--the other one--then we have got an argument.

I say the best proof that we have an argument here is that they haven't reached their test representative period here since this rate has been in effect--even assuming their test representative period is right. So I say we do have an issue here.

MR. MOORE: Along with that--just so we don't get the facts confused--they have met the test representative period not only on one occasion but on a number of occasions. So I

don't want the equity to get all bollixed up here. He may not have reached it as consistently and for as long as he would like week after week, but they have reached their test representative earnings and have exceeded those earnings. And I think that sheds some light on why the Joint Incentive Committee did that which they did.

MR. JARDIN: There have been some occasions when they have exceeded it. But those are a rarity when they have exceeded the representative test period earnings. On the whole, they have been below.

MR. MOORE: There were 13 weeks in 1962, not counting turns.

MR. JARDIN: Since 1961.

MR. MOORE: Since June, 1962.

MR. JARDIN: That is 13 weeks out of 150.

MR. MOORE: If I disregard the tenths you have considerably more.

[Brief discussion off the record.]

THE UMPIRE: On the record.

Here is what you have. This is what you have got before me, and it grows out of decisions and problems which go back to 1958 and 1959 after the May 25th Agreement was first being put into effect. You remember those big cases down in

New York.

MR. JARDIN: Yes. You were the Arbitrator, too. I remember.

THE UMPIRE: That is right. And as I held then, and as the May 25th Agreement clearly provides, when you have just a simple substitution of a standard hourly wage rate based incentive for one of the old incentives, what the parties have provided in the May 25th Agreement is just this one standard that the Company has to meet, and that is the past representative test period. And that is not the minimum guarantee.

If the incentive is so engineered that applying it with the adjustments to the proper production which was made of the past representative test period, during that period, would have for that production come out with equal earnings, the incentive as the parties have written this Agreement is O.K.

That does not mean that if the production record later on was lower, that earnings won't drop below the past representative test period. Or if they go higher, they will go above.

But the test the parties set up was that for the particular production experience of that particular 3 months, if the incentive as adjusted meets those earnings then it is

O.K. And I am powerless under the May 25th Agreement to apply any other standards.

Now, there is the problem which I pointed out about the fact that you might have an incentive possibly which met the May 25th Agreement standard of the past representative test period, and yet proved to be inequitable on one basis or another, and that that question could be raised under certain circumstances.

It can always be raised under Article V, Section 2(c) when you have a technological change. And the parties in the January 4, 1960, memorandum defined what they meant by equitable incentive compensation.

Now, unless I am mistaken you have a case here in which, it seems to me, that none of the issues you can raise under the May 25th Agreement are before me. The Union contends nevertheless that there is an inequitable incentive here.

The problem I have to decide--and I agree with you that there must not be a bench decision--is whether or not the parties have left me room in these agreements to look into these other areas. So I think that this is a problem I should take under advisement and see.

This case has not arisen under Article V, Section 2(c). It is not a new incentive under Article V, Section 2(b).

Exhibit C Attached to Affidavit of William D. Scott.

Query: is there anything in the May 4th memorandum, anything in the Agreement anywhere, which permits me to raise the equitable compensation, or permits the parties to raise this issue?

This is the problem. And quite frankly, I will discuss it with the Joint Incentive Committee as I am obligated to do under my agreement with the parties, and decide it.

But until I decide that issue, I think it is impossible to go ahead with the merits here.

MR. JARDIN: Here is the disadvantage I am in, and always am in, especially in cases like this.

I have to argue these cases with lawyers and Industrial Relations people. I try to apply commonsense. But you can't do it when you are arguing with those people.

My argument is the simplest one in the world. As you say, regardless of what the production is, they are not guaranteed any amount of money. There is not a minimum set.

But where a group is paid off a production unit, and this production unit is making out--they are doing all right--if this group is paid off of those people and is not making out, there must be something wrong with their rate. There has to be. That is the simplest argument I can think of.

Now of course, under the legal terms I may be away off base. I don't know. But I am saying that so long as this

main group is making money and a fair rate, then I can't see anything except that the people are being paid off a rate that is wrong if they are not making out all right. And that is the case we have before us here.

MR. TROST: The thing that is hard for these men to understand is this: when this rate was instituted back in 1960, the way production was in 1960 in comparison with the way production is today, these men didn't feel it. They haven't felt it.

Now, there is something radically wrong here. If a high level of production should be reached a higher level in earnings should also be accorded. But it is not. So that there is something radically wrong with it.

THE UMPIRE: Well, I have got unfortunately, I think, the preliminary problem of seeing whether or not I am authorized to get into this. Because---

MR. JARDIN: I will admit this has to be decided first.

THE UMPIRE: Yes.

MR. MOORE: I would like to talk about this. I think there are a couple of issues here, and as I understood what you said, Ralph, you were addressing yourself only to one of them. That was your authority under the May 25th Agreement,

the test---

THE UMPIRE: And the other one.

MR. MOORE: I am also--not primarily but also--equally interested in the authority of the Joint Incentive Committee.

If this committee is going to have authority and is going to have a right to exercise that authority, then what it says should stand here. That is, that there are not any issues.

Now, if this is going to be a committee reduced to nothing but an Advisory Committee, then I say that that was not the intent of the parties in setting it up. And that is not what it says in the contract that the Joint Incentive Committee shall do.

The Joint Incentive Committee has been a very valuable thing to the parties and also to the Umpire. And I think that any attempt to weaken its authority, or to challenge its authority, is a very serious matter.

THE UMPIRE: If that question is before me, it is very serious.

I have seen a very confused picture here, and maybe we ought to clarify it. I have seen on the minutes what seems to be an agreement by the members of the Joint Incentive Committee. But I have seen all the other documents giving indica-

tions of disagreement.

It is quite clear that when there is disagreement in the Joint Incentive Committee the merits come to me.

MR. MOORE: That is true. But I do not see how on Company's Exhibit 17 one can say there is any disagreement.

THE UMPIRE: I can't, either. That is why I am very confused about the status of this thing. But there was, as you know, a controversy over the appeal of these grievances. And in dealing with those appeals I find letters from the Company stating the time within which the Union may appeal from the date of disagreement.

MR. MOORE: That is right. Because as I understand the situation--I was a party to that in writing those letters,--it was decided that the issue of whether the Joint Incentive Committee had said the final word on this case should come before you.

Now apparently, this was disputed on the other side of the table. And that is one of the reasons why we are here.

That last document says there are not any issues. The Local has insisted that there are issues.

THE UMPIRE: That issue, you see, does not appear in any of the written documents.

MR. MOORE: The issue appears, it seems to me, in

the sense that the final document of the committee which is to review rates has said there are not any issues.

Now there has been an appeal. What could be appealed?

The first question, it seems to me, that you have to answer is, is there anything to be appealed to you if the Joint Incentive Committee has said, "We agree that there are not any issues in this case"?

Then the second consideration is, if you can then proceed, is there anything in the contract which would permit you to say, "Well, in spite of the fact that the past representative test period has been dropped, or there are not any issues that can be raised under it, can I get it under equitable compensation?

This raises the third point which is a big question mark in my mind, and is one I wanted to raise also in these remarks; that is, positing that you got to that step, on the burden of proof as to proving, is it sufficient to say, "We are making less money"--and this goes back to yesterday--or does the Union have to come in and say, "We are making less money, and the thing which is wrong with your rate is here and there." I posit it is the latter situation, which in no event has this case ever gotten to.

THE UMPIRE: That situation is implicit in the case.

Exhibit C Attached to Affidavit of William D. Scott.

MR. JARDIN: Now there is something I take very thorough exception to with the Company, the question of the burden of proof.

The Company has their time study men, their Industrial Engineers who time-study these jobs. At no time will the Company ever allow a Union time study man to go in along with these people to do the time study. They don't allow it, it is contrary to policy. They set up the rate.

They have some 30 or 40 component parts of how the rate is set. We have no way of proving which of these parts are wrong. They might all be wrong, or there might only be 1 or 2 wrong. We can't prove that.

I will agree with George in part on the first statement he made with regard to the Incentive Committee. They have been very helpful--to the Company. If this be treason, make the most of it!

Again I have got to go back and repeat myself. Maybe George may have a point on the machine, a particular producing unit, where their earnings have dropped. Why have they dropped? Maybe they are not producing as much. They could tell the different parts, where it should be.

But these people are paid off of these machines, and these machines are paying off. That is where the difference

lies between this case and the case on a producing unit.

MR. MOORE: But then that could only go to the correctness of the weighting we give the contributing units, and at that point again there has been no showing that there is anything wrong there--unless you are contending that we open up all of the rates that contribute to this through this medium here, which would be another highly serious matter.

MR. JARDIN: Those rates are either agreed to or settled. We can't reopen those.

MR. MOORE: I am glad to hear you say that.

MR. JARDIN: They are settled. What can we do, unless there is a technological change?

MR. MOORE: What can be said about the case except that the weighting of the contributions from those is not proper? And that has been raised time and again throughout this thing, and been dropped. There is nothing to it. So there is no issue. It goes right back to where it was before.

MR. JARDIN: Where has it been dropped?

MR. MOORE: Would you like the Step 4-1/2 minutes?

MR. JARDIN: No.

THE UMPIRE: You are talking about the weighting of this--this has been dropped?

MR. MOORE: The weighting has been raised in the

procedure prior to the Step 4-1/2 meeting, and the Step 4-1/2 meeting clearly says there aren't any issues. I come right back to where I was before.

THE UMPIRE: Well, I think that the weighting issue, if it is raised at all, would be raised under Article V, Section 2(c). It would have to be. Or not under that, but under the question of equitable incentive compensation, and the question is whether or not that question can be raised, assuming that we get past the position of the Joint Incentive Committee which is quite an obstacle in this case.

MR. MOORE: All right.

THE UMPIRE: You see what I mean?

MR. JARDIN: That is where we stand right now.

THE UMPIRE: Gentlemen, I understand your positions. Some of these are the problems I have tried to call attention to in that decision on the New York case.

Basically, the problem I called attention to is still here. But I agree with you, George, that the position in this picture of the Joint Incentive Committee must be dealt with, though I must confess that an agreement from which one party appeals is a novel situation in my experience in the grievance procedure.

MR. MOORE: I think it is novel only to this extent.

The practicality of the situation. And I think that you are well acquainted with what has transpired here, but I don't think that should deviate from the fact that if you follow that course and say it is permissible, then the Joint Incentive Committee does not have any backbone at all, it is without flesh and does not serve much purpose.

MR. JARDIN: They have a heck of a good head bone, though.

THE UMPIRE: O.K., gentlemen.

[Case closed.]

[The hearing recessed at 4:05 p.m. o'clock.]

Exhibit D Attached to Affidavit of William D. Scott.

BETHLEHEM STEEL COMPANY

Meeting of Joint Incentive Committee
June 2, 1964

The Joint Incentive Committee appointed pursuant to Section 5(e) of the Supplemental Agreement dated May 25, 1956 (the May 25th Agreement) met at Bethlehem, Pa. Those present were:

For the Company	For the Union
D. C. Barnum	G. L. Frey
L. Penninger, Jr.	W. J. Theis
J. S. Ferguson	

Lackawanna Plant grievances relating to incentives established pursuant to Section 5(b) of the May 25th Agreement were discussed and disposed of by the Committee as described below:

Grievance No. A-7329 - Incentive for the Hooker on Crane No. 384 in the Cold Strip Mill

The Committee noted that Article V, Section 2(c), of the Agreement dated April 6, 1962, cited in the Union's brief does not apply to this grievance since the incentive in question was established pursuant to Section 5(b) of the May 25th Agreement.

for incentive purposes and whether the appropriate incentive is being applied to the job; and

2. The parties are to review the method used by the Company in comparing earnings of the Stocker (Yard) on down turns in the past representative test period to ensure that earnings on down turns only are compared.

Grievances Nos. B-3139 and B-3141 - Incentives for Mechanical and Electrical Maintenance Employees in the Continuous Sheet, Strip and Plate Mills Division

The Committee noted that Article V, Section 2 (c), of the Agreement dated January 4, 1960, cited in the Union's brief does not apply to these grievances because, as indicated under "The Issue" in that brief, the incentives in question were established pursuant to Section 5(b) of the May 25th Agreement. The Committee also noted that the Local Union withdrew the issues relating to the past representative test period and the designation of the incentives as indirect at the arbitration hearing on November 27, 1962. The statement of the Company representative at the Step No. 4 meeting in October, 1963, in respect of these grievances that any adjustments which may be made in incentives which serve as components of the incentives involved here will also apply to these incentives confirms the established policy of the Company which the Committee has understood and agreed to. That policy precludes the existence of any issue in these grievances relating to component incentives as to which there are unresolved grievances.

Accordingly, the Committee finds that there are no remaining open issues in these grievances.

Grievances Nos. H-829 and H-830 - Incentives for the Crews of Cranes Nos. 412 and 441 - Cold Strip Mill

The Committee noted that Article V, Section 2(c), of the Agreement dated April 6, 1962, does not apply to these grievances because the incentives in question were established pursuant to Section 5(b) of the May 25th Agreement. The Committee noted also that there is no issue in respect of the past representative test period since, although that issue is mentioned in the grievances, it has not been argued in the lower steps of the grievance procedure or in the Union's brief. For the reason given above in the discussion of Grievances Nos. B-3139 and B-3141, the Committee finds that there is no issue relating to component incentives as to which there are unresolved grievances.

Accordingly, the Committee finds that there are no remaining open issues in these grievances.

The foregoing conclusions and dispositions have been agreed to by the Joint Incentive Committee.

FOR THE UNION:	FOR THE COMPANY:
William Jacko	D. C. Barnum
George L. Frey	L. Penninger, Jr.
William J. Theis	J. S. Ferguson

BETHLEHEM STEEL CORPORATION
- Lackawanna, N.Y. -

Continuous Sheet, Strip and Plate Mills-Mechanical Maintenance - Retroactive Payment Offer
Retroactive Period - 4-17-60 through 6-9-62

Position	S.H.W.R.	Retroactive Amount/Hour (S.H.W.R. x .0146)
General to Hot & Cold Mills		
Millwright (Millwright "A")	$2.940	$.043
Mech. Repairman "A" (Millwright "B")	2.800	.041
Mech. Repairman "B" (Millwright "C")	2.660	.039
Mech. Repairman "C"	2.520	.037
Mechanical Helper	2.380	.035
Welder "A"	2.940	.043
Welder "B"	2.800	.041
Welder "C"	2.660	.039
Storekeeper Shop	2.170	.032
Tractor Operator	2.450	.036
Oiler & Greaser Leader	2.800	.041
Oil System Man	2.660	.039
Oil System Man Helper	2.380	.035
Oiler and Greaser	2.380	.035
Oiler and Greaser Helper	2.240	.033

Position	S.H.W.R.	Retroactive Amount/Hour (S.H.W.R. x .0146)
General to Hot & Cold Mills (Cont'd)		
Bearing Machinist	$3.010	$.044
Bearing Machinist Handyman	2.450	.036
Bearing Repair Helper	2.380	.035
Bearing Changer Machine Operator	2.380	.035
Bearing Changer	2.520	.037
Bearing Changer Helper	2.310	.034
Roll Bearing Washer	2.100	.031
Shear Blade Supplyman	2.590	.038
Shear Blade Supplyman Helper	2.240	.033
Rubber Vulcanizer	2.730	.040
Automotive Maintenance		
Automotive Mechanic	2.940	.043
Automotive Repairman "A"	2.800	.041
Automotive Repairman "B"	2.660	.039

Exhibit E

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Exhibit E Attached to Affidavit of William D. Scott.

Continuous Sheet, Strip and Plate Mills - Mechanical Maintenance - Retroactive Payment Offer

Retroactive Period - 4-17-60 through 6-9-62

Position	S.H.W.R.	Retroactive Amount/Hour (S.H.W.R. x .0146)
Automotive Maintenance (Cont'd)		
Automotive Repairman "C"	$2.520	$.037
Automotive Repairman Helper	2.310	.034
Automotive Greaser	2.310	.034
Machine Shop		
Craneman	2.520	.037
Machinist Leader	3.220	.047
Machinist "A"	3.080	.045
Machinist "B"	2.940	.043
Machinist "C"	2.800	.041
Machinist Helper	2.310	.034
Shear Blade Grinder	2.450	.036
Rotary Surface Grinder	2.450	.036
Machine Operator "A"	2.660	.039
Machine Operator "B"	2.520	.037
Machine Operator "C"	2.380	.035
(Millwright "A")	2.940	None ∮
Mech. Repairman "A" (Millwright "B")	2.800	.041
Machine Shop (Cont'd)		
Mech. Repairman "B" (Millwright "C")	$2.660	$.039
Mech. Repairman "C"	2.520	.037
Blacksmith "A"	3.010	.044
Blacksmith "B"	2.870	.042
Blacksmith "C"	2.730	.040
Blacksmith Helper	2.380	.035

Note: Positions in parentheses are those created by craft cha[illegible]s (1-1-66).

∮ Position effective as of 1-1-66 due to craft changes.

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Exhibit E Attached to Affidavit of William D. Scott.

Exhibit F Attached to Affidavit of William D. Scott.

OFFICE OF THE IMPARTIAL UMPIRE

DECISION NO. 865

May 23, 1963

In the Matter of BETHLEHEM STEEL COMPANY and UNITED STEELWORKERS OF AMERICA LOCAL UNION NO. 2604	Grievances Nos. B-2137 and B-2236 Lackawanna Plant

This proceeding concerns the status, under the applicable "timeliness" rules, of two incentive grievances, one arising at the 54-inch Tandem Mill (Grievance No. B-2137) and the other at the Hot Strip Mill (Grievance No. B-2236). The Company claims that both grievances should be considered settled and that neither is properly before the Umpire. The Union denies that the grievances have been settled and claims the right to proceed on the merits.

The question was argued on November 27, 1962. At the close of the argument, the Union asked that decision be deferred for at least sixty days in order that it might have an opportunity to search for further evidence on the "timeliness" issue and -- on the basis of such evidence -- petition for a rehearing. The request was granted. Since then the Union has submitted a letter commenting on the procedural history of the two grievances and asking that the hearing be reopened. The Company opposes this application. It is ruled on below.

Exhibit F Attached to Affidavit of William D. Scott.

The grievances are among those which were certified to the Manager of Industrial Relations of the Company and thereafter reviewed by the Joint Incentive Committee pursuant to Paragraph 2 of the Memorandum of Understanding of January 4, 1960. With regard to such grievances, the parties have entered into a Letter of Agreement, dated September 1, 1960, which reads as follows:

> "This will confirm our agreement that, in order for an incentive grievance which shall not have been disposed of by representatives of the Company and the Union pursuant to paragraph 2 of the Memorandum of Understanding of January 4, 1960, to be considered in arbitration pursuant to Article XI of the Basic Agreement, it shall be appealed in writing by the Chairman of the representatives of the Union to the Company within 20 days after the record of such discussion shall first have been received by the Chairman of the Union representatives.
>
> "The record of such discussion shall be prepared by the representatives of the Company and shall be signed by them and the representatives of the Union within 30 days after the conclusion of the meeting at which such discussion was completed." (Emphasis added.)

The question is whether the two grievances have been appealed to arbitration in compliance with the 20-day time limit here provided.

The last meeting of the Joint Incentive Committee which considered these grievances was held on November 13, 1961. At that meeting, the Company took the position that because of the Union's inaction with regard to these grievances since a prior meeting in May, 1961, both grievances should be considered settled. Specifically, the minutes of the November 13th meeting, dated November 17, 1961, and signed by both Company and Union representatives, state the following with respect to Grievance No. B-2236:

Exhibit F Attached to Affidavit of William D. Scott.

> "The Company noted that, at the end of the meeting in May, 1961, the parties had reduced the issues in this grievance to (1) allowances for start-up turns and (2) rates for material subject to controlled cooling. The parties agreed at that time that the Union would notify the Company on or before July 15, 1961, whether the revised rates which the Company had put into effect covering those items are satisfactory. The Company noted that the Union has not made any comments to the Company and it is, therefore, the Company's position that the grievance has been settled."

With respect to Grievance No. B-2137 the minutes state:

> "The Company stated that, at the end of the meeting in May, 1961, the remaining issues in this case had been reduced to four, as to which the Company refused to make any adjustments.
>
> "The Company stated that, since the Union had not appealed the grievance to arbitration in accordance with the procedure set forth in the letter agreement dated September 1, 1960, it is the Company's position that the grievance is settled."

On January 3, 1962, the Union sent a letter to the Company's Manager of Industrial Relations stating that it was appealing these grievances to arbitration. On January 30, 1962, the Manager of Industrial Relations replied to this letter, calling attention to the above quoted portions of the minutes of the November 13 meeting of the Joint Incentive Committee and stating that "these grievances are deemed to have been settled and are not subject to appeal to arbitration."

On these facts, the Company's claim of untimeliness must necessarily be upheld. The Company's position at the November 13 meeting was clearly a final position which could properly have been appealed to the Umpire for review. This position was communicated orally to the

Exhibit F Attached to Affidavit of William D. Scott.

Union representatives who attended the meeting: i.e. both to the Union members of the Joint Incentive Committee and to the various representatives of the Local Union who were present. It was explicitly set forth in the minutes of the meeting which -- according to the evidence were presented to the Union members of the Joint Incentive Committee on November 17, 1961. Under the Letter of Agreement of September 1, 1960, the time to appeal these grievances to arbitration must therefore be held to have expired on December 7, 1961, and the Union's attempt to appeal them on January 3, 1962 simply cannot be held to have been timely.

In its letter asking for a reopening of the hearing on the timeliness issue, the Union states that:

> "A search of all claims and records in respect to these grievances does not reveal on what date the minutes were received by the Union concerning a meeting of the Incentive Committee of the Company and Union held November 13, 1961...."

At the hearing, however, the Company flatly asserted that November 17 -- the date appearing on the minutes -- was "the date that the Chairman of the Union Joint Incentive Committee received the minutes." This assertion was not challenged by the Union then. It does not appear to be challenged now. And the question of when the Local Union received the minutes is not material to the issue, for under the Letter of Agreement the twenty-day time limitation starts to run when the minutes "shall first have been received by the Chairman of the Union representatives."

The Union also contends in its letter that the only "timeliness" issue which the Umpire should properly consider is that which the Company raised at the November 13 meeting -- i.e. the question of whether the Union's inaction with respect to these grievances following the May meeting of the Joint Incentive Committee had been such that the grievances should be considered settled and not subject to appeal. This -- which may be called the "first" timeliness issue in this case -- was the only one discussed by the Manager of Labor Relations in his January 30 letter contesting the Union's right

to appeal. And the Union asserts that it was only this "first" timeliness issue which was discussed by the Company in its pre-hearing brief. Accordingly, the Union contends, the introduction at the hearing of the "second" timeliness claim -- the failure to appeal within 20 days after November 17, 1961 -- should be barred under the well-established rules governing the waiver of the right to raise claims of untimeliness.

It is unnecessary to reopen the hearing to rule on this contention. The relevant documents -- the Company's letter of January 30, 1962 and its pre-hearing brief -- are already in evidence. And the Umpire could find in this record no basis for a holding that the Company had waived its right to raise the "second" timeliness claim. It has frequently been held -- in the cases cited by the Union and in many others -- that the Company may waive its right to assert a claim of untimeliness by conduct inconsistent with such a claim -- i.e., by dealing with a grievance on its merits without reserving an untimeliness claim, etc. But no position which the Company has taken on these grievances since November 13, 1961, has been inconsistent with the "second" claim of untimeliness. On the contrary, its whole claim both before and after the Union's letter of appeal is that the grievances had been settled and could not properly be appealed. Persistence in a claim that the grievances were not properly before the Umpire because of the Union's inaction prior to the November 13 meeting can hardly constitute a waiver of the right to claim that they were also barred from the Umpire by the Union's delay following that meeting.

The Union's request to reopen the hearing is therefore denied. It apparently has not discovered any further evidence which might bear on the timeliness issue. And its contention that the "second" timeliness issue could not properly be raised by the Company is based on the evidence already in the record and seems clearly to lack merit.

In view of the Umpire's holding that the grievants are barred by the Union's failure to appeal in timely fashion following the November 13, 1961 meeting

of the Joint Incentive Committee, it is unnecessary to rule on the question of whether they are also barred by the Union's inaction following the May, 1961, meeting of that Committee.

D E C I S I O N

For the reasons above stated, the grievances are held not to be properly before the Umpire and are accordingly dismissed.

Ralph T. Seward
Impartial Umpire

Exhibit G Attached to Affidavit of William D. Scott.

REPORT BY BEN FISCHER ON RULES GOVERNING INCENTIVES AT BETHLEHEM STEEL UNDER JANUARY 4, 1960 AGREEMENT

Ref Ex I Fischer Dep. 1

There are four kinds of incentive problems which arise under the agreement between Bethlehem Steel Company and the United Steelworkers of America:

1. New incentives where none now exist.
2. Changed incentives as a result of a changed condition on the job.
3. New incentives established pursuant to the May 25, 1956 Agreement.
4. Changed incentives established after a May 25, 1956 incentive has already been established.

Our purpose here is to outline the rules governing each of these categories of incentives and to make some general observations regarding the background, the procedures, and the operation of the grievance procedure.

I

New Incentives

Where no incentive exists and the Management decides to establish an incentive, the first question that must be resolved is whether the job in question is direct or indirect. The January 4, 1960 Memorandum of Understanding defines "direct" as "jobs which directly affect the rate of output and where the output may be measured economically and with reasonable accuracy." It defines "indirect" as "jobs which do not directly affect the rate of output or where output cannot be measured economically and with reasonable accuracy."

If the job is "direct", the incentive must be designed so as to pay above the standard hourly rate proportionately for all pro-

duction in excess of 72⅔ percent of maximum possible production. Maximum possible production will be the maximum possible output of the machinery or other equipment used or the maximum possible output of a fully qualified employee in the case of a job where production of a machine or other equipment is not involved.

If this maximum were achieved, the earnings would be 38 percent (37.93 to be exact) above the standard hourly rate. It would be most unusual to achieve 38 percent. Normally an average of 30 percent should be achieved.

This is based on engineering studies and experience. The pre-1960 formula of the Company was based on a maximum of 33 1/3 percent and produced earnings opportunities of about 26 percent. An increase of about 4 2/3 percent in the maximum should result in about 4 percent in the average -- or 130 percent.

A new incentive can be found deficient in two ways. If it can be shown that the maximum set for 138 percent is not justified by the facts but is based on unattainable standards even at maximum conditions, then the rate is wrong. It does not provide "equitable compensation" as defined by the parties. If it can be shown that the men cannot earn 30 percent above the standard hourly rate, this may be reasonable evidence that the contract requirements have not been met. When this latter claim is made, the mere failure to earn 30 percent is not likely to be sufficient evidence against the equity of the rates. The issue of slowdown or failure to work at an incentive pace may be injected by the Company. However, it should be noted that the men should be able to earn 30 percent for something less than maximum possible production or output; if they were reaching maximums, they would be entitled to 38 percent.

Exhibit G Attached to Affidavit of William D. Scott.

Incentives are set upon a job basis. Therefore, the earnings achievement is measured on a job basis. That leads to the question -- what is a job? This cannot be categorically answered. It can be the job which is described and classified. Or, it can be a particular station or the part of a job which is studied and incentive rated. Each situation must be examined on its own merits and we should urge that job be defined narrowly enough so as to avoid averaging out people operating different machines or performing different tasks.

If the job at issue is "indirect", then the same measurements and guides used above govern but when the figure is completed, the incentive paid is 67 percent of what it would be if it were "direct". Therefore, the 38 percent becomes about 25 percent; the 30 percent becomes about 20 percent. Except for using this reduced factor, everything else stated herein is fully applicable.

II

Changed Incentives

Whenever an incentive is changed as a result of factors designated in Article V, Section 2(c), three things are brought into play:

a) The incentive may be changed to reflect the new circumstances.

b) The earnings must be no less than they were -- giving "due effect to the change or other event" which led to changing the incentive.

c) The new incentive must provide "equitable compensation".

For this reason, if the incentive was paying more than "equitable compensation" as defined in the January 4, 1960 Memorandum of Understanding, then that level of earnings must be maintained. If the employees slow down, they cannot expect as much pay. But if they perform comparably to the past, they must receive no less money.

However, if the prior earnings were not enough to equal "equitable compensation", then the new incentive must pay more money -- enough to meet the test of "equitable compensation". This applies under every circumstance -- whether the new incentive is based on the standard hourly rate or not and whether the old plan met the May 25, 1956 criteria or was established as a new incentive where none had existed.

If earnings exceeded the level called for under the definition of "equitable compensation" and the incentive is changed, earnings cannot be reduced but must be kept in line with those which had existed regardless of the circumstances.

III

Conversions

The May 25, 1956 Agreement required the Company to convert all incentives to provide the standard hourly rate as the base rate. To protect employees against any wage cuts, the new incentive had to provide no less than the old one. The test was application of the old and new plan to a representative 3-month period to see if the new plan did pay out as well as the old -- on the average.

The January 4, 1960 Memorandum of Understanding brought about another test to be applied to all incentives based on the standard hourly rate established for whatever reason prior to March 13, 1960 and to all incentives established on or after March 13, 1960 pursuant to the requirements of the May 25, 1956 Agreement.

This new test is as follows:

For maximum output or production, 35 percent above the standard hourly rate shall be paid (35.1 to be exact). Therefore, it is estimated that since the Company used 33 1/3 percent in setting up these incentives, it will be necessary to adjust the incentive stand-

ards by about 1.35 percent. The Company estimates this will average about 4 cents for direct workers.

This adjustment in incentives will result in a wage raise effective March 13, 1960 for those on incentives based on the standard hourly rate unless they have an "incentive adjustment" in which event the rate will go up but the "incentive adjustment" will be reduced by the same amount. For these employees, the average earnings should remain the same.

For indirect workers, the same adjustment is made in the maximum figure and then, 67 percent of this new figure is applicable -- instead of 50 percent of the old figure. Therefore, the 1.35 percent increase is applied to the standards. Then, instead of using 50 percent of the gain, the new applicable pay figure will be 67 percent of the gain. Therefore, the actual rates paid will rise 34 percent plus .9 or a total of 35 percent (or 34.9 to be exact). This will apply as of March 13, 1960 to all indirect workers on incentives based on the standard hourly rate.

Here too, however, any "incentive adjustment" in effect will be reduced by the amount of the increase in rates.

New incentives established solely because of the May 25, 1956 Agreement will not have to meet the test of "equitable compensation" but the January 4, 1960 Memorandum of Understanding does revise the May 25, 1956 Agreement by adding to the representative period test an additional test. All May 25, 1956 incentives established on or after March 13, 1960 must provide earnings 35 percent above the standard rate for maximum possible output or production. This should normally average nearly 28 percent in earnings. If the incentive is not so designed, it is deficient under the 1960 Agreement.

The same is true for indirect workers except that what they are entitled to is 67 percent of the above figures.

This does not resolve all questions under the May 25th Agreement. It resolves two and only two -- the representative test period remains intact and a new test of earnings on a job basis is provided.

Other questions still persist, however. These we will discuss later.

IV

Converted Incentives Which Are Changed

Prior to the January 4, 1960 Agreement, the decision that an incentive met the representative period test still left wide open the question of whether it provided "equitable compensation". The issue could only arise, however, when the incentive was changed under Article V, Section 2(c). No one knew -- not even the Umpire -- what lay ahead. Each case would have to be treated on its own merits.

As a result of the January 4, 1960 Agreement, this matter is largely -- but not entirely -- resolved. When an incentive is in conformity with the May 25, 1956 Agreement and with the 1960 amendments, if it is changed under Article V, Section 2(c), it must still provide "equitable compensation".

Therefore, an incentive established to pay 33 1/3 percent above the standard rate at maximum possible output, and revised to pay 35 percent pursuant to the new requirements, must still be further revised to pay 38 percent when the job is changed under Article V, Section 2(c), no matter how big or small the change in the job or no matter what kind of change it is.

There is only one exception to this -- if an existing incentive plan is extended to like equipment. This is not really an ex-

ception because in such a case the same incentive is being used; it is not being changed.

If the employees are earning more than "equitable compensation", then their earnings are protected. The Company cannot adjust the rates downward to pay out only "equitable compensation".

V

Some Remaining Questions

We have reviewed the major categories. Now we turn to some of the problems which remain unsolved.

Our purpose in getting into the May 25, 1956 program was threefold -- to overcome the inequity of applying wage increases so as to reduce the percentage of real incentive gain, to increase earnings because Bethlehem incentives were lagging behind and to give the incentive worker a greater potential for increasing earnings.

All three of these purposes have been accomplished. Wage increases are now applied to incentive workers on a full percentage basis, in fact more fully than at any other basic steel company. Earnings have been substantially increased as the latest figures as compared with pre-May 25, 1956 data will show. The potential for greater earnings is there because the new incentives provide for increased earnings in the same proportion as increased production or output.

In the course of so comprehensive a program certain problems do arise. We are hopeful that we can resolve these problems equitably. If not, we will be compelled to arbitrate. If arbitration does not succeed in bringing about fair and reasonable results, then we will have problems on the agenda for the 1962 negotiations requiring equitable solution.

Here are some of the problems:

1. What is a job? In dealing with this matter under new incentives we did not deal with the specific problem that arises under the May 25th Agreement. If the representative period test is met by averaging out several machines or separate operations, one may well be doing some people a favor at the expense of others. It can be a borrowing from Peter to pay Paul situation. We believe that the job for this purpose must be construed so as to produce a fair result. The agreement is designed to prevent wage cuts. Job must be defined in each case with this in mind. Every practical step must be taken to prevent wage reductions caused by this averaging process.

2. What is the representative period? These incentives are applicable from the date of installation on. If it turns out that the representative period does not represent the conditions under which the rates are being applied to the job as actually performed, then the period is not representative. One of two things become true -- either the rates as installed were wrong or they were right then, but changed conditions made them wrong under Article V, Section 2(c) and they must be changed. It is unthinkable that the May 25th Agreement can be used for wage cutting.

The Company sets the rates, decides on the incentive structure and dictates how the work is to be performed. Therefore, it must bear the burden of seeing to it that the incentive will pay out on the job as actually performed. It cannot hide behind the technicality of the choice of a 3-month period and the development of rates and devices to meet that test period, and then wash its hands.

However, we would be unwise to not face facts squarely. We cannot look at the experience of some day or week or pay period or

particular run of work and ignore the actual earnings over more representative periods. It is not surprising that earnings fall below what they would have been under the old rates, especially during periods of low production. But if the rates do provide equal or greater earnings under relatively normal or average conditions, then it is likely that over the long pull earnings will actually increase. This is because a higher base rate results in increased incentive compensation for increased production faster than under a lower base rate.

The key to this problem lies in a factual examination of earnings. Examination of earnings over a number of representative periods should reveal whether the new rates really pay out or not. The Company should be asked to furnish such information when employees believe they are suffering because of the new rates.

3. What about product mix? This is always a troublesome subject. We learn to adapt ourselves to one setup and when it is changed, problems arise.

If there were wide differences under the old rates between pay for different products, runs, orders, sizes, etc., and the new rates level out these differences, it is likely that suspicions will be aroused. This is especially true when the former losely-rated jobs are run with greater than normal frequency.

This matter can bear on the whole question of the representative nature of the test period. It can also raise the question of whether an Article V, Section 2(c) change has taken place justifying a change in rates. There is no way to answer these questions except on a case-by-case basis in the light of the facts.

One guide can be used, however. If the earnings on the job

as a whole stand up, it will be difficult indeed -- if not impossible- to upset the incentive. We can't pick and choose particular job runs or particular turns and successfully condemn the incentive on that basis if representative earnings figures show a different picture.

Perhaps in our discussions further issues will be brought out.

We are obliged to decide which pending grievances must still be processed and "the specific issues on which the Union seeks further discussion". Then we must carry on such discussions. And finally, if we cannot agree we arbitrate.

Our long run purpose is clear. We want satisfactory incentives. We expect that our members will respond to such incentives and that management will gain through increased production and through increased productivity. To achieve this long run aim, it is essential that we resolve the questions pending, settle the grievances and promptly handle future grievances. This is the goal we all have.

Pittsburgh, Pennsylvania
March 7, 1960

Exhibit H Attached to Affidavit of William D. Scott.

OFFICE OF THE IMPARTIAL UMPIRE

DECISION NO. 1138

July 12, 1965

In the Matter of BETHLEHEM STEEL COMPANY and UNITED STEELWORKERS OF AMERICA LOCAL UNION NO. 2604	Grievances Nos. B-3139, B-3141, H-829, H-830. Lackawanna Plant

Each of these four grievances relates to one of the new standard-hourly-wage-rate-based incentives which Management has established at the Continuous Sheet, Strip and Plate Mills, pursuant to the Supplemental Agreement of May 25, 1956. Each case has been carried through all steps of the grievance procedure; each has has been considered by the Joint Incentive Committee. In each case Management claims that in these proceedings all issues have been settled by the parties themselves and that nothing remains for the Umpire to decide. The cases are here for a ruling on this claim.

On the basis of the records before him -- the minutes of the various 3rd and 4th Step Meetings, the pre-hearing statement, the minutes of the Joint Incentive Committee meeting of June 2, 1964, and the record of action taken with respect to certain of these grievances at a prior Umpire hearing -- the Umpire must hold that Management is correct and that the issues properly raised by these grievances have either been withdrawn or settled by the parties themselves.

Exhibit H Attached to Affidavit of William D. Scott.

Dealing first with Grievances B-3139 and B-3141, which relate to the Incentives established, respectively, for the Mechanical Maintenance Department and the Electrical Maintenance Department, the Umpire's findings are as follows.

1. Three claims raised by the Union early in the grievance procedure -- i.e. (1) the claim that the incentives were too complex; (2) the claim that the incentives for these maintenance employees should be based on their actual work rather than on the work performed by operating employees; and (3) the claim that the earnings of the employees under these incentives had fallen below the levels established during the Test Period -- do not involve any claim of contractual violation on which the Umpire might rule. None seems to have been pressed by the Union in the later steps of the grievance procedure; and none provides a basis for Umpire appeal. The Umpire must accordingly dismiss them from further consideration.

2. The claim that the employees of these two departments should be paid as direct rather than as indirect workers was withdrawn by the Union at an Umpire hearing held on November 27, 1962; the withdrawal is noted in the transcript of that hearing.

3. The claim that the Test Period used in establishing these incentives was not truly representative was withdrawn by the Union at a date not made clear in the records but prior to the filing of its Pre-hearing Statements dated March 25, 1964. The withdrawal is acknowledged in those statements.

4. The claims relating to the level of earnings derived from the various component incentives were settled by the parties at a meeting of the Joint Incentive Committee on June 2, 1964, upon the basis of a Company statement that "any adjustments which may be made in incentives which serve as components of the incentives involved here will also apply to these incentives."

The Umpire finds, accordingly, that there are no remaining open issues in these grievances upon which he may properly rule and that they must accordingly be dismissed.

Exhibit H Attached to Affidavit of William D. Scott.

Grievances Nos. H-829 and H-830 relate to the incentives established for the Cranemen and Crane Chasers on Cranes Nos. 412 and 441, respectively. With regard to these grievances, the Umpire finds as follows.

1. Though the grievances contain general statements that the Union disagrees with the new incentives and with the Test Period and considers the rates unreasonable and unfair, no specific claims concerning these incentives have been advanced by the Union at any point in the grievance procedure. The Union's only contractual claim is that the incentives violate Article V, Section 2 (c).

2. Article V, Section 2(c) does not apply to these incentives because they were established pursuant to Section 5(b) of the May 25, 1956, Supplemental Agreement.

The Umpire finds, accordingly, that there are no open issues in these grievances upon which he may properly rule and that the grievances must be dismissed.

D E C I S I O N

The grievances are dismissed.

Ralph T. Seward
Impartial Umpire

Transcript of Proceedings, April 6, 1973.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

* *

LAWRENCE RALPH and DIVERS OTHERS,

Plaintiffs,

-v-

CIVIL ACTION
NO. 11,892

THE BETHLEHEM STEEL CORPORATION and
THE UNITED STEELWORKERS OF AMERICA,

Defendants.

* *

Proceedings held before the Hon. John T. Curtin, United States District Judge, in Part II, United States Court House, Buffalo, New York, on April 6, 1973.

APPEARANCES: WILLIAM D. SCOTT, Esq., Attorney for the Plaintiffs.

HODGSON, RUSS, ANDREWS, WOODS & GOODYEAR, Attorneys for the Defendant THE BETHLEHEM STEEL CORPORATION; JOHN E. DICKINSON, Esq., of Counsel.

TIERNAN, KRUG & GODINHO, Attorneys for the Defendant THE UNITED STEELWORKERS OF AMERICA, by THOMAS E. KRUG, Esq.; BREDHOFF & GOTTESMAN, of Counsel, by MICHAEL GOTTESMAN, Esq., of Counsel.

THE COURT: Mr. Scott, nice to see you again.

MR. SCOTT: Nice to see you, Judge.

THE COURT: I have received your answers to my questions. I appreciate it. Before I consider this submitted, I thought it might be a good idea to get together one more time and hear your comments of any length you desire to make. Mr. Scott, perhaps you should go first.

MR. SCOTT: If you prefer, I will, your Honor, but it isn't my motion.

THE COURT: Do you want someone else to go?

MR. SCOTT: They are making the motions.

MR. GOTTESMAN: Good morning, your Honor.

THE COURT: Mr. Gottesman.

MR. GOTTESMAN: I am counsel for the union defendants. We were the original moving parties and the companies have also moved for summary judgment. I would like not to discuss at any length the legal issues because this Court has had very similar legal motions in other cases and is familiar with it, but rather to focus on what seem to be a few of the factual points that have gotten elaborately discussed

in the summary judgment papers. All I propose to say about the legal test is that I think it is clear and I don't think that Mr. Scott disagrees that this whole case turns on whether or not the union has breached its duty of fair representation. We have a little bit of a conflict about how, and I think the conflict exists because the cases aren't that entirely clear about where precisely the duty of fair representation ends. We have cited a series of cases which stand, we think, for the proposition that absent a bad faith motivation there is no breach of the duty of fair representation.

Mr. Scott has come down pretty heavily on the word "arbitrary" which appeared in Vaca v. Sipes and he has some district court cases which talk about grievances being processed in a perfunctory manner. That phrase, I think, is subject to interpretations. Perfunctoriness can be evidence of bad faith. It may be that the Courts really

intended as Mr. Scott suggests something more than that, to wit that a union which really demonstrates a disinterest in the performance of its duties is thereby breaching the duty of fair representation so that even though it doesn't have a bad faith motivation, it doesn't dislike this grievant. It is just as though it were shrugging its shoulders or refusing to perform those responsibilities which it undertook when it got certified as the bargaining agent. I really don't think it matters which of those standards is applicable in this case. This union has certainly not handled these things perfunctorily. It has spent enormous amounts of time, enormous amounts of manpower in dealing with this case. We have some disagreements about some of the judgments the union made along the way and those I would like to address myself to, but I think that it does become clear upon going through this record that these were judgmental questions. We think

the union made them all correctly. We don't think it is the Court's province to decide whether it made them correctly or not. Once it is clear that they were judgmental questions and that the union faced them on the merits, we submit, that is the end of the lawsuit right or wrong. That is to say, whether the union's judgment was right or wrong. The fact that it was sincerely exercising a judgment under the applicable legal standard disposes of the case.

Now, one of the problems we have had and we have had it in moving for summary judgment is that the plaintiffs' theory as to what it is the union has done wrong has changed substantially over the many, many, many years that this case has been pending. Initially, the plaintiffs brought a lawsuit in which they really wanted to try the arbitration case which the union had settled and their claim was the company had not properly computed or not installed an incentive which in their

view complied with the applicable contractual standards and as it was initially framed in some of the plaintiffs' early pleadings, the defect that the union had committed was that it did not take to arbitration and argue their theory of how this contract should be interpreted. I think it is clear under Vaca v. Sipes that that is not the issue.

In any event, I think it is plain that if we come to that that the union's judgment on the issues originally raised by the plaintiffs was manifestly correct. The union had in hand at the time these incentives were established the decision of the impartial umpire rendered in 1959 in which in 23 pages, and if the Court has not done so, it is an exhibit and we would urge the Court to read it because it is really the source from which all of our problems stem.

The arbitrator in the 23-page decision laid down the ground rules which were to govern questions about

this kind of incentive installation. That is, the institution of an hourly based incentive in substitution for the kind that had previously existed, the so-called tunnage incentive and he said in this kind of a case where that is the kind of incentive installation it is none of the normal contractual standards are applicable. I, as the arbitrator, construing your special 1956 agreement, conclude that there is only one issue in that kind of an incentive case. There is only one thing the union can complain about, because there is only one obligation which the contract imposed upon the company and that obligation was that after they had substituted the new incentive plan for the old that using a representative test period, it must yield the new one applied to that period, must yield earnings at least equal to those which were, in fact, yielded by the old, applying it to that representative test, and so said the arbitrator the only issue that a union can really raise in

this kind of a case is that the company did not use the right representative test period or that it, in applying it it doesn't work out that way. Well, there is no dispute in this case that it works out, the mathematics work out because what the company did was develop a new incentive plan, apply it to the representative test period and to the extent there was a deficiency using the new plan they put in what they call an IA, an incentive adjustment or additive which brought it up and there is no dispute under the arbitrator's decision that the company can meet this standard by using this kind of an additive, so there is no problem of arithmetic. Therefore, the only thing conceivably left to the union was a claim that the representative test period was improper.

Again, at the outset, that isn't what the plaintiffs were complaining about. They were complaining that looking to the contractual language which deals with other kinds of incentive

plans that this one didn't measure up to those contractual standards, but the union knew from the arbitrator's prior award that it couldn't make those claims and it was because of that that it settled this case in the four and a half step and as to the representative test period, it gets very complicated but our affidavits deal with it and all I propose to say about it now is that it is clear from the affidavits that the union made a judgment that this was a representative test period which was used. Indeed, it made a judgment that the period the company used was a uniquely good one from the standpoint of the employees, that they were going to make out better under that test period than under the others that they might alternatively argue should have been used and that, therefore, in the best interest of the employees, it would be unwise, not alone just futile, but unwise to pursue an arbitration and claim that the company used the wrong

test period.

Now, that was a judgment call. The union may have been wrong and Mr. Scott may or may not be able to prove that there was a better test period to claim, but the point is the union made that judgment sincerely and it was made by people who are expert in this kind of thing and that is under the duty of fair representation that has got to be the end of the case.

THE COURT: In other areas, in other plans, and when I say "plan", I mean particular area jobs, that the test periods similar were used. In other words,it wasn't, as I understand the agreement, it said three months before the date.

MR. GOTTESMAN: It said it would normally be the 13 weeks, I think, preceding the installation date of the plan.

THE COURT: As I remember in reading all these affidavits, it appears to me that then when the company and the union got into the process of putting the various plans in the various plants and the

various units into effect, that it appeared that there was more lead time than was required so that figures could be developed and that seemed to be a reasonable kind of procedure to use so that there was a delay in other time. This was a split period here?

MR. GOTTESMAN: That is correct. It was around a strike period.

THE COURT: In other places in that split period, was that used in other times?

MR. GOTTESMAN: Yes. I believe one of the company's current affidavits, one of the ones filed this week recites that other plans at the Lackawanna plant also utilize split periods, not just the one in this lawsuit. The union faced that at the time. The union considered way back in whatever year it was that it was actually grappling with this the possibility of arguing that a split period, you know, an argument that obviously could have been made, - whether it would win or not is another thing, but a split period is unusual

and, therefore, you shouldn't use it, but after the union took a close look at the production during the particular weeks in question that were involved in that split period, the union made a judgment we better not do that, this turns out to be a pretty good period.

Now, in the company's more recent affidavit, they actually cited statistics to show the performance in the various periods, both preceding and after the one that was used, and incidentally, this information was also given to the union at the third step meeting while this grievance was being considered so that the union did have before it the evidence to show that this was pretty good. Whether or not it was the right test period, it was a good one and, therefore, one which it would be unwise for the union to challenge, but there is nothing unusual about this and because of the timing of incentive installation and because so many of them came in in early 1960 which was

right after the basic steel strike in 1959, it was quite common, at least at this plant for plants to be using split representative test periods.

Now, one other thing which the plaintiffs have said with respect to those original issues, with respect to the union's original disposition of this case, relates to the fact that after the case was settled at the fourth and a half step by the incentive experts of both parties, a settlement which both parties understood to be final and binding and therefore, to exclude the possibility of an arbitrator overturning it, there developed a ground swell from people, I assume the same ones who are the plaintiffs in this lawsuit, you know, here at Lackawanna unlike every other steel plant in the country the people way upstairs don't decide which of our cases go to arbitration, we do, and by golly, we want to take this case to arbitration and so literally they could get into the court house door. They can

get before the arbitrator by insisting on going there, but the union staff representative who was going to present the case in arbitration knew full well that because the thing had been settled, the arbitrator's decision on the merits was going to be that the case had been settled and when his deposition was taken, Mr. Scott asked him about the nature of the arguments that he made, he used what I would concede is the unsolicitous phrase that he argued the case with tongue-in-cheek.

Mr. Scott siezes on that to say that this was an insincere argument. Happily, Mr. Scott gives us the sections of the transcript of that hearing. He actually argued very vigorously, made every conceivable argument there is and they are spelled out in, I believe it is, Appendix C. It is Appendix C to the plaintiffs' affidavit. The Court can read it and can see that Mr. Jardon did, in fact, vigorously argue everything there was to argue as to why the settle-

ment of this case should not be ruled by the arbitrator to be binding and why on the merits the union ought to win. He was tongue-in-cheek because he knew he was going to lose and indeed right at the hearing the arbitrator just kept climbing all over him saying, "Now, but isn't this case settled, aren't you bound by the settlement agreement which was reached at the fourth and a half step, and anyway on the merits, isn't it clear from my prior decisions that you can't win". I guess every lawyer in his experience has had a case he went into knowing he was going to lose and getting climbed all over by the Court and getting all of the arguments that he knows are very convincing from him. That is what happened to Mr. Jardon when he took this case to arbitration and that is why many years later he is able to characterize what happened that day as his presenting all of these arguments tongue-in-cheek. I don't think it is in any way conceivable

to read that statement as meaning that he was being insincere or not caring about the employees. What he said to the arbitrator is on the record. He made all of the arguments there were to make and what he meant by the phrase was he knew he was going to lose, and by golly, he sure did.

Now, those were what we thought were the issues in this case when we started out and I think as it became clearer and clearer, there was no breach of the duty as it related to the initial presentation and handling of the grievance procedure and the ultimate settlement of this case; that the plaintiffs' position came around to what is now, I think, become the focus of attention and it is really a completely new argument. There was nothing in the first few years of the litigation that dealt with it, and that is the computation of the retroactive amounts to which the employees are entitled.

The settlement which the union

reached with the company at the four and a half step provided that as the direct incentive grievances were settled that they were to some extent determinative indirect. The company would, in fact, make such adjustments and such retroactive payments for these plaintiffs to reflect the decisions and the ultimate resolution of the direct incentive and in fact, what the company did is with each of the direct units grievances was finally settled, and the exact amount of its computation was determined the company would apply that prospectively to these indirect workers who are the subject of this lawsuit. In other words, from that day forward, they would get the benefit of the adjustment in the direct incentive. The company did not, with each of them, go back and compute the retroactive amounts for the indirect workers. It did for the direct workers and it paid them off, but on the indirects it decided "look, we have got five differ-

ent direct units that are in dispute here. Each of them may end up, since each of them contributes to the incentive that the indirects get, each of them may end up adjusting either up or down the retroactive payments that we are going to owe to the indirect people and rather than have to go through this process of five separate computations each time we settle one computing the new retroactive payments and making the distribution of these several hundred people, we will wait until all five of the direct incentives are settled and then make one retroactive payment which takes into account the settlement of all five."

Now, the only judgment the union made on that one was not that the company didn't come to the union and ask its device. The company just said "This is what we are going to do". A grievance could have been filed saying "No, you can't do that, you got to pay each one retroactively when it is ready".

The union never did that. No employee ever filed a grievance saying that the company should do it the other way. The union, I suppose, would have been very concerned if it could have anticipated that over the years the company was going to proceed to lose the records so the retroactive computation couldn't be made, but I think one can hardly say the union breached its duty of fair representation by not anticipating that the company was going to lose records when Mr. Scott's own discovery establishes this is the first time in history the company has ever made a goof up like that. There was no way the union could anticipate that, so I don't think there was a breach in the union's allowing the company to wait until all five directs were finished before making the retroactive payments and then we get to the point, well, okay, now all five are finished. It is time for the retroactive payment. The company discovers it has lost some of the records and they can't

make the computation the way it normally does.

Now, the first thing the company undertook to do at that point was to devise as best a formula that it could to replace the one that it couldn't use because it didn't have the actual records for the retroactive period which was 1960 and 1961. It took instead the period of 1962, 1963, 1964, 1966, where it did have records and looked to see what the earnings were during that period and what the impact of the adjustments have been and it said "Now, we are going to assume that the experience from '60 to '62 was comparable of that from '62 to '66 and base the retroactive payments on that analogy.

Now, the union has not yet been called upon in the grievance procedure to say whether that is the best solution or not. I can see the union going back and saying to the company "Well, you want to pay interest on this", and there are all kinds of things. The union may

come up with a better formula. This lawsuit was filed and it sort of brought things to a halt, at the point of which the company having discovered the loss of records tendered to the union its suggestion as to the best alternative formula. It was tendered to the union. There happened to be a union meeting. The union reported to the employees that there was this proposed formula and the company had actually computed the amount that would be paid out, I think $89,000 in retroactivity.

Mr. Scott happened to be at that meeting and spoke to the employees and persuaded them that they didn't really want this, they wanted to bring a lawsuit instead, which is why this lawsuit got filed and at that point, the process of working out the retroactive payment sort of ground to a halt while this lawsuit has gone on for several years, but we think that two things are true about that retroactive payment.

One, in some fashion or other either this Court or an arbitrator or the parties in the grievance procedure are going to have to come up with an alternative formula. The company has lost the records from which its normal computations would be made and so the only question is what formula are we going to come up with and who is it that is going to decide what that formula is.

Now, the company has come up with one formula which their affidavits insist are very generous and they say it is inconceivable that the true records would have yielded as much as what they have done and that they have indeed deliberately aired, as it were, in favor of the employees because they feel guilty about the records. That may or may not be true. I am not the union's incentive expert and I don't want to bind the union into a position in response. We may say the company's formula is very good or we may think of

a better one, but the question is whether we agree or don't who is ultimately to resolve any dispute about the correct retroactive payment and we submit, as does the company, that this is something that should go to the grievance procedure and ultimately, if the parties can't agree with it there, that it should go not to this Court, but to the arbitrator.

As the Court will see from the several decisions of the impartial umpire, he is an expert in incentive methods and that is why the parties have him. He is an expert in some other things too. His career is to interpret collective bargaining agreements and apply them and incentives are a major portion of his business. He is the expert the parties selected for that purpose and this is, as the Supreme Court would put it, grist in the mills of arbitrators. He is going to be, we submit that he is the person the parties have selected to do this, but in any

event, he is uniquely qualified to decide what is the best formula to substitute for the lost records. If the parties are unable to work that out themselves and there is no, - at this point there is not yet any breach of the duty by the union which would warrant substituting this Court for the arbitrator to make that decision because if we are right that the union is not held accountable to have expected the company to lose the records and, therefore, it was confronted with a fete d'acompli which is "the records are lost, what are we going to do about it now".

The union hasn't done anything wrong yet. The union is prepared to do what it normally does with the problem and what that is to negotiate with the company and if we can't agree, take it to arbitration and have the arbitrator decide how the computation is to be determined.

That is our position. We submit

there hasn't been any breach and unless the Court has additional questions of us, I would, I guess, rest at this point.

THE COURT: Mr. Gottesman, why don't I hear from Mr. Dickinson at this point or Mr. Scott, and I may have some questions.

MR. DICKINSON: If it please the Court, I have very little to add to the general presentation because at this juncture I think the preliminary question and the question that is definitive of the whole motion obviously is this question to which Mr. Gottesman has just addressed his remarks, and that is the issue as to whether there has been failure of representation on the part of the union.

The company takes the position that, first of all, that any question relating to an incentive payment or an incentive plan does, indeed, involve the application of the agreement and both under the '56 agreement and under the collective bargaining agreement it is properly disposable in the grievance procedure and

that this is the exclusive remedy.

Now, on the issue of, - with the sole exception of a claim of failure of representation by the union. The second could which is set forth in our affidavit is the factual data which oes to the issue that irrespective of that that the company has not breached its collective bargaining agreement; that it was there and prepared to proceed with the grievance procedure and generally setting forth the fairness of the tender that was made, all in support of the notion that the employees have indeed received a fair and equitable treatment, but I think today certainly and at the threshold there is no question that the issue that would determine this is the issue as to the union acts in representing these employees and I submit that the record shows a very vigorous defense, particularly during the stages 1, 2, 3 and 4, - I don't mean 1 so much, but at the level of 3 and 4, the minutes of which I think are before the Court today

and show, and I think a chronology showing numerous meetings and much confrontation on this question.

I suppose one might ask if it is that simple of an issue why the lengthy affidavits, and one doesn't normally expect lengthy affidavits in an issue in which there is no question of fact. I appreciate that, but I felt notwithstanding some impression that might be raised from the lengthy affidavits that it was only fair to this Court that we set forth at some length all of the data pertaining to the, - that is within the realm of possibility, - the records on this are rather voluminous, showing the vigorous presentation by the union, showing the positions taken and what is more, going on to show how the company undertook to implement this plan and what indeed is the effect of the implementation of the plan.

It seems to me, for instance, counsel from time to time is urging that his clients are entitled to 67 per cent

of whatever retroactive pay is made to a direct worker and I can understand that that is a notion one might get, but if one reads the method of implementation of these plans, it is very obvious that that doesn't follow at all and that increases in direct incentive earnings do not necessarily result in 60 per cent of that figure going to indirect employees. You have the 100 per cent floor that is explained at some length by Mr. Williamson.

You have the IA, in which with an IA of this size and with the numbers of mills that were being added on by reason of improvement or change in the plans by direct workers, the IA was ten times the amount of the add on, so what I am saying is that we set forth all of this because not that that is conclusive on the issue as to the company's obligation or breach of contract, but it shows, since all of this was in front of the union and in front of the company, it shows the reasonableness of the conduct

of the company and of the union throughout the handling of this matter.

Now, as has been pointed out, at the outset, there were a number of claims in varied nature. I think generally speaking what there was was a stomach reaction on the part of some of the employees that what they were receiving out of this incentive plan was not producing the high earnings that perhaps aspirations are greater than realization and they were disappointed in that and I can understand that that was so.

They were complaining in the earlier stages of the complexity of the incentive plan and I think we will all have to agree that they are highly complex, very difficult to construe and very difficult to apply. All of these peripheral arguments I think at one point they were suggesting that they should be held to be direct production workers rather than indirect and that issue, I never really appreciated how

they would think that that was the case, but that claim was made and I think Mr. Scott's memorandum to the Court in February of '71, that issue was withdrawn, so what we are down to, it seems to me, is the one issue that is now before us and pointed up by your Honor, incidentally, in the questions that you propounded to us and at one point or one of the questions related to the representative test period, not so much the question of whether it is fair or unfair but the question as to whether the union was justified based upon all of the decisions that it had had in other grievances for other units under the same incentive plan, whether this union was justified in taking the action of determining that the representative test period was indeed at least an appropriate one to this unit.

On that one, even though we had not thought in the earlier stages that this was continuing to be an issue, the impression was at some stage along the

line that that was relegated to a second position. I did add in Mr. Williamson's affidavit, a response, in response to your Honor's question as to the fairness of the representative, I think some data that brings home that very clearly. The argument is made that the contract talks about the first, the three months preceding installation of the plan and that if you do not follow that, I gather Mr. Scott suggests then you have violated the contract as to test period.

Without laboring the issue, it is perfectly obvious that if the plan is to go into effect on April 17, 1960, as this one did, you cannot conduct production down to April 16, 1960 and then do the things that have to be done in time to start a plan on April 17th. Each of the, - well, in the first place, you have to get the average of the earnings under the old plan and apply them, and have them at hand and then you start this laborious process. In

fact, most of the work in the development of the plan and in the arriving at the IA takes place after the conclusion of the representative test period and after that date, it is in hand that is when the hard work begins.

Taking these standards, standard minutes and applying them to every task and to every break and to every stoppage, every breakdown, converting all of that into, for each of these units and each of the direct units, - it isn't just in the indirect, it is in the direct units, all of that labor has to be done based upon the experience in that particular representative test period so that the test period is more than a lapse of time. It is one of the vital beginning tools on which you build a plan and the plan, therefore, and ultimately, you test the old plan earnings against the proposed new plan earnings using the test period and using all of that data and you thus arrive at this very important IA.

The IA, it appears from Mr Theiss'

affidavit that the IA became to be a very important factor here and whereas I don't know that I can place myself in his position, it seems that what he is saying is that the thing that was the most valuable for the employees was to get the highest IA possible. In other words, if the incentive plan and the standards didn't produce a very high earning during the representative test period and if the production were not that good during the representative test period then a higher IA was in the picture and that was a fixed dollar amount that the company was committed to forever, and this is the judgment. I don't know if it is the right way to judge it but it comes through rather clear in his affidavit that that was the judgment that was made.

There is a suggestion by Mr. Scott that the representative test period is something that is selected, that the company runs comparable figures and then arrives at a particular test period

Williamson, of course, very clearly negates that. Here was a company that was putting in hundreds of plans, laboring as hard as it could to put one together. I think he said he was trying to do one a month and if you have hundreds of them to do, it is perfectly obvious that you can only do twelve a year and there is a lot of work to do without running, - without running comparable sheets and find out whether or not this is favorable or not favorable. He indicates, - he says that as a matter of fact, as soon as the plan is in hand and you have got the time studies down and you know where you are going to go on the plan, you routinely take the preceding thirteen weeks wherever they fall. It is a judgment made at a very low level within the department and that becomes the test period and as quickly as you can, you make the computations so that you can get it into effect within a matter of a few months thereafter, but there is always a time lapse, and that

I think the very best evidence, though, on this question of the representative test period is seen in the exhibit attached to Cummmings' affidavit in which we have the minutes of the third step meeting of this grievance. This was, incidentally, - it is not clear. At the top of the page, Judge, it is covered up by the staple, but that meeting took place on May 1, 1961, as you can see very early in the grievance, but these, - this is a presentation to the union first of the average hourly earnings for some three to four years, - three years, I guess, prior to the institution of the plan, and you see there that the straight average for that period, using a constant hourly wage was 3.243, $3.243 per hour, and that is interesting because that compares with the test period earnings which came out to 3.261 per hour, very comparable, very close, and then the suggestion is made that what would have happened if you have taken the three month period

immediately preceding the April 16th, 1960 installation of the plan, and here we have the figure for the first quarter of 1960, that the average hourly earnings were 3.286, and on Page, - if you are looking at the exhibit, your Honor, it is Exhibit 5, on the second page of that exhibit at the bottom of that column of figures it has quarterly figures and there is a note in there first quarter of 1960.

THE COURT: Is this Cummings' affidavit?

MR. DICKINSON: It is Cummings' affidavit. It is Exhibit 5 attached to it, on the second page of that exhibit.

THE COURT: That would be Page 135?

MR. DICKINSON: Yes, yes. This is out of a book of minutes, obviously. On the second page of that exhibit, will you notice that there is a column of figures under Paragraph 3 in which they give quarterly earnings, all adjusted to the same hourly wage, and the first quarter of 1960 the average earnings were, - that is adjusted to the old figure, but it

would be the same, 3.286, so in other words, the average earnings were 3.286. The test period earnings were 3.261. I submit highly comparable. To the extent that they are not comparable, it would appear that the last quarter of '59 was slightly less in production than the first quarter of '60, but of course, Mr. Theiss said that is exactly what they were looking for when they were presented a plan so that they could get a higher IA, and the last indication on this, I think, is in Mr. Williamson's affidavit in which he points out the tonnage in the hot mill proper, whereas that is not the entire strip mill. That is the inbound side of the strip mill and therefore, a pretty good gauge of what is going on in the strip mill and there you will see that he has the tons per hour during the first quarter of 1960, and that is in Williamson's affidavit.

On Page 6 of Williamson's affidavit he sets forth the tons per hour, average

tons per hour in the hot mill proper, the major part of this plan, 45 percent of the plan, and the inbound side of the strip mill, so it is indicative of what is going on in the strip mill, 315 tons per hour in the first quarter of 1960. In the last quarter of 1959 carrying into January of '60, - that is the test period period, it was 307 tons, so that I submit that this is proof of something that Mr. Scott has raised in his answers to your question. This was a highly representative period and what is more, these earnings data were given to the union at the third step level in 1961. They were before them and a part of the judgment which they made when they decided that representative test period they had no place to go.

I would urge that this is a showing of reasonableness on the part of both company and the union and I can appreciate that a fellow would always feel that with a new incentive plan, he ought to make out better, he ought to

do better, but we must go back to the language of the umpire in which he says the sole test is the representative test period and his language, - this isn't just 1959, - if you will read the record of the colloquy between Jardon and the umpire in the arbitration proceeding in June of '64, - October or November, - the decision was in June, but the record itself is attached to Mr. Scott's papers and it is a very interesting colloquy because Mr. Jardon is there pressing the unfairness, the complexity and the unfairness, generally, of the earnings that are being received by the employees, but the umpire handles it. Now, you see this is long after the 1960 agreement that Mr. Scott refers to, the memorandum agreement which he says changing things, but the umpire there responds to Mr. Jardon and ultimately he decided issues had been withdrawn, but here on the merits he is meeting the question as to whether he can consider anything other than representative test

period and he says here "as I held then and as the May 25th agreement clearly provides when you have just a simple substitution of a standard hourly wage rate based incentive for one of the old incentives what the parties have provided in the May 25 agreement is just this one standard that the company has to meet and that is the past representative test period". That is the umpire not speaking to whether an issue has been withdrawn by the union. That is not the umpire speaking in 1959 prior to the 1960 change in the agreement. That is the umpire speaking in 1964 addressing himself to the many complaints which these, - which this, - these employees were raising and in turn, the union was carrying to arbitration the issue, and carrying it knowing very well that that was the test, and so they lost.

THE COURT: Mr. Scott.

MR. SCOTT: Your Honor, first of all, I don't want to get into a great deal of mechanics on this either. As I understand it and

as I look at it, my purpose here is to show you that there are triable issues of fact. I don't intend that we should stand here today and have a trial of this lawsuit on all of these affidavits that have been submitted. I would like to begin, if I could, with one of the questions that the Court submitted to all of us and bring out some of the problems of credibility that exist by virtue of the very affidavits that have been submitted in support of both of these motions and if there is a serious credibility question by understanding is, of course that this motion then too would have to be denied and the motions for summary judgment.

One of the questions the Court put to all of us was concerning the handling of the hot mill and the tandam mill production grievances.

Now, everyone points out in their papers in support of this motion, both respondents do, both defendants do, that those grievances, the hot mill and the

tandam mill only had to do with the production workers. Well, that is of course true, but they involve the direct production incentives which make up, which go to make up the incentives that my people earned, and you asked a question concerning the handling of those grievances.

THE COURT: This is question two, the affidavit of Mr. Trost and Mr. Theiss correctly set forth the history of the negotiations?

MR. SCOTT: No, your Honor. It would be question, - I labeled it Question 6 on Page 3 of your memorandum, your Honor.

THE COURT: All right.

MR. SCOTT: The last full paragraph where you refer to Paragraph 30 of my affidavit because I believe that paragraph of my affidavit sets forth the failure to appeal those two production grievances.

Now, in response to that question by you, you got back a supplemental affidavit from Irving Trost who was involved in union activities back then. He says in his affidavit, his supplemental

affidavit to you that these two production grievances, it was his recollection the union officials decided had no merit as apparently, - I say to you now as apparently they did in our situation, that they decided that these grievances had no merit and that the union intentionally let the time run out and that only a few individuals were still dissatisfied, puts this in his supplemental affidavit. Well, now, if that is what the union intentionally did, let me read to you here very briefly just a quotation from the transcript of the arbitration hearing on those production grievances again Mr. Jardon for the union handled those two grievances back in November of 1962. The hot mill proper and the tandam mill production grievances. He is made aware by the arbitrator that the time to appeal has run so the arbitrator is saying what are we doing here, your time to appeal has expired, you didn't say anything by the July 15th deadline. Mr. Jardon says, to quote Mr. Jardon "However,

on the various issues we raised, we were waiting for some answer from the company as to whether they were going to correct any of the issues and to our holy horror", he says, "The company took the position that these grievances are settled since nothing had been done about them up to the 15th of July". The umpire then says to him, - The umpire again is Mr. Stewart, the umpire that handled our grievances, "according to the minutes", he says, "This wouldn't be a matter of the union waiting for the company's action, but the union agreeing that it will notify, that it knows what action the company has taken and it is saying that it will notify the company on or before July 15th of 1961." Is the union's position that these minutes are not accurate? Mr. Jardon says, "Well, the union told them that they couldn't accept that offer, that it was just like asking for less money for the employees. We understood that the company was then going to look into the

issue and let us know whether it amounted to a cut in pay". Then the umpire finally says "Well, if the union had in effect told the company what it thought of the rates and was passing the ball back to the company for a statement of its action, why don't the minutes say that, Mr. Jardon? The minutes indicate just the reverse", and his answer is "I don't know why they don't say that." Now, that doesn't sound at all to me like what Mr. Trost says in his supplemental affidavit that the union had decided these grievances too had no merit and the time to respond, the July 15th deadline was purposely allowed to lapse.

Now, because in Paragraph 32 I assume this is because of Paragraph 32 of my affidavit, I refer to Paragraph 32 to certain statements concerning the examination before trial of Ben Fischer who was a union employee and concerning the fact that the employees have not been paid what we call, - have not been paid under the January 4th memorandum

of understanding which defines a term called equitable compensation. The company's affidavits, - the Trost original affidavit from Mr. Trost on Page 9, the Theiss original affidavit on Page 8 and the company, Mr. Evenden's affidavit, Page 3, make a point of saying, "Well, the January 4th memorandum of understanding defining equitable compensation as no application to these claims", and they cite this decision of the arbitrator in 1959, but in March, - March 7th of 1960, a memorandum was prepared by this Ben Fischer. Ben Fischer, by the way, according to the union's brief, is very experienced in incentive matters and is one of the International's most experienced technicians in the field of incentive breaks, according to the union's brief. He writes the memorandum that is distributed to all of these people in March of 1960.

THE COURT: Where is that in the record before me?

MR. SCOTT: The memorandum?

THE COURT: The Ben Fischer memorandum?

MR. SCOTT: The Ben Fischer memo is Exhibit - -

THE COURT: Is it attached to your motion?

MR. SCOTT: It is attached to my opposing affidavit, right.

MR. DICKINSON: Exhibit G, I believe, your Honor.

MR. SCOTT: Yes, Exhibit G, yes. That is dated March of 1960, four months after this arbitration decision and in that he goes on and he tells these people in his memorandum the January 4, 1960 memorandum of understanding brought about another test to be applied to all incentives based on the standard hourly wage rate established for whatever reason prior to March 13, 1960 and to all incentives established after March 13, 1960, pursuant to the requirements of the May 25, 1966 agreement.

He says the January 4th memo of understanding revises the May 25th agreement. He says all May 25th incentives which we have here, - ours is a May 25, 1966 incentive, - all May 25th incentives established after

March 13th must provide earnings, he says, 35 per cent above the standard rate for maximum possible production and then he says this should normally average 28 per cent if the incentive is not so designed it is deficient under the 1960 agreement.

In other words, what he is saying if you look at the charts of per cent performance, your Honor, what he is saying there is that the average per cent performance for a direct worker should be 128 per cent performance. Now, he says that in this memorandum and also if you would look, your Honor, there is a memorandum on file with the Court dated January 30, 1967, signed by Hugh Russ, Sr., Ken Schroeder and Robert Walker of the company which devote at least a full paragraph to detailing for the Court how the January 4, 1960 memorandum of understanding affects the plaintiff and how it applies to the plaintiffs. Now, this is the same Ben Fischer, the expert and the

International's most experienced technician who denied to me first of all in Pittsburgh that he wrote that memorandum initially and then finally at the end said that he had no idea what 74 per cent of maximum possible outfit was and neither did anyone else in the union have any idea what that term meant, and furthermore, that he wasn't experienced in incentive matters but Mr. Jacko was and Mr. Jacko, of course, at the time is deceased, but that he had no knowledge of any such matters.

Now, I want to point this out to you, your Honor, in line with this, there wasn't one single week that the per cent performance for the week in the strip mill between April of 1960 when our incentive plan was put into effect and October of 1966, - that is the latest per cent performance figures I have, - not one week did the per cent performance average for the week come up to 128 per cent performance as the union technician and experts, who, I

might say somewhere in the papers had a hand in drafting and designing the May 25th agreement, Mr. Fischer did. Not one week came up to his expectation.

Now, in my affidavit, your Honor, in opposition to the motions I point out to the Court the Bryson-Ferguson memorandum which I discovered through discovery proceedings.

THE COURT: Where are you now?

MR. SCOTT: I am on Page 5 of my opposing affidavit, Paragraph 13 of my affidavit, if the page isn't numbered, your Honor. Quotations out of that memorandum between two industrial engineers for the plant before this lawsuit was started. I won't quote them. You can read them, your Honor, but they go on to detail how the various production people were paid off and one of the quotes winds up by saying for reasons now unknown, nothing was paid to the indirect people", and they talk in Paragraph 15 in terms of our retroactive obligation. I don't think anyone seriously denies that these

people have money coming. The question is, the point is there is no way to tell how much they have coming.

Another point, a question of fact that I think is sufficient to warrant the denial of all, of these two motions, worksheets that were lost. I point that out in my affidavit. Worksheets that Mr. Rosser, the chief payroll accountant for the last 30 years or so, he lost these worksheets and according to him they should never have left the plant. Mr. Law, the chief industrial engineer, prior to Mr. Rosser's deposition, says that "Well, these are shipped out to Saylorsburg, Pennsylvania".

THE COURT: Is there any union fault on the company losing the records?

MR. SCOTT: No. I am now talking with respect to the company's motion when I bring these points out. These are points that I think will defeat the company's motion.

THE COURT: Can you return, Mr. Scott? I don't want to cut you off and I won't, but you know the position the company

and union take is that all right, these records were lost and there is some retroactive pay that should be made. They claim it can't be letter perfect, but they can come close it ought to go to arbitration rather than the Court. Do you agree with that?

MR. SCOTT: No, no. Number one, it shouldn't go to arbitration because once we have established a triable issue of fact as to whether or not the union breached its duty and once we establish a similar triable issue on the question of breach of contract, then I do think that under the Vaca decision under the Stinson, the decision in this circuit, that we are entitled - -

THE COURT: Wouldn't that have to do with whether or not the scheme, the plan that they worked out was the correct one and whether or not the union failed in its duty to represent you in the correct manner? All right. That is past and we do have a scheme.

MR. SCOTT: We have a scheme which was - -

THE COURT: Right or wrong, we have a scheme.

MR. SCOTT: That is a scheme that was presented to me and to the rest of these people the day I was retained in May of 1966, supposedly a month before the first search for the missing records took place. That is when this was presented to me, in May when my retainer took place at the JFK Hall in Lackawanna. Somebody came in in front of me and handed to Irving Trost the proposed offer which is attached to the various papers here and Irving Trost, in my presence said, "This is it, take it or leave it. This is all you are going to get", at the union hall in May of 1966.

Now, according to the Rosser deposition, the first search for missing records took place in June of that year. I don't know whether they are working backwards in proposing adjustments or how long they knew about these missing records.

THE COURT: Did they meet, - you see, that only has to do with how much is going

to be paid under the agreement as it was finally worked out. Let us assume one thing. Let us assume that there is no fault on the part of the union and all we have here is a computation. Should that be to the arbitrator or should that be here?

MR. SCOTT: No, that should be here because the computation, - the only reason the computation arose or was necessary was because Arthur Jardin, through the years, we claim, mishandled and arbitrarily handled and perfunctorily handled those grievances.

THE COURT: All right. Tell me, Mr. Scott, what did Mr. Jardin do where he, - what you call, - what do you want me to look at in particular about what Mr. Jardin failed to do or didn't do?

MR. SCOTT: Well, I ask you to read very carefully, my affidavit in opposition to the motions, first of all, and if you read the transcript of the November, 1964 grievance proceeding before Umpire Stewart.

THE COURT: I have read that.

MR. SCOTT: Okay. You will find in there that Mr. Jardin starts out by telling that arbitrator, - one of the things he tells him is "Well, Mr. Arbitrator, four or five of these direct production units have not yet been paid off. When they are, as and when they are, the indirect people will be paid", and then the company says "Oh, yes, and we have agreed to that, Mr. Arbitrator, we agree that a three and a half step meeting or so that that would be done, didn't we, Mr. Jardin", and Mr. Jardin says, "Yes, we did", end of problem, and that is the reason in the arbitrator's decision that the last paragraph of his decision says, he breaks the grievance down, the plaintiffs' grievances into various categories. In Paragraph 4 on Page 2 of his decision, the arbitrator's decision says "The claims relating to the level of earnings derived from the various component incentives were settled by the parties at a meeting of the joint incentive committee upon the basis of

a statement by the company that any adjustments which may be made in incentives would serve as components and these incentives will also be made here", and Jardin says "Yes, that is what we agreed to". This is November, '64. He knew at that time that four out of the five production units had already been paid with nothing at all being paid to the plaintiffs. He testified to that in his EBT, and yet he is telling the arbitrator that four out of five have yet to be paid and if he had, - our position is if he had told the arbitrator not only in November of '64, but up from the time these grievances were instituted, if he had told the arbitrator, "Now, wait a minute, people are being paid left and right here and we are not getting anything", if he had told him that, perhaps something could have been done. These records could have been found at that point.

Furthermore, Mr. Rosser in his deposition, your Honor, and in Mr.

Rosser's deposition for the company, testified thatwhen he found that these records were lost, when he found that these records were lost, they could have been duplicated in 1966 from payroll records that were still being retained at Pennsylvania but nobody made any effort to go down and get them or to send for them. Now, if the union and if Mr. Jardin had handled those grievances properly, perhaps these records would never have been lost and perhaps the arbitrator would not have decided in November of '64 "Well, there are no remaining issues open because the parties have resolved everything."

Secondly, the reason their calculation is not acceptable to us is because, you see, it involves a comparison of earnings from 1962 to 1966, but that comparison necessarily includes in it the award that was made retroactively to the hot mill proper and tandam mill people on that early grievance that we also claim Mr. Jardin goofed up on

because they didn't raise a problem by the deadline. They didn't question the incentive adjustment by the deadline, so if those figures are incorrect and if the union is in fact unhappy with that adjustment given to those people, it is going to affect this computation that they are offering us now. That is the other reason we don't feel it should go back to an arbitrator. These, what we claim are breaches of duty, admittedly I am not moving for summary judgment. Admittedly, there is certainly no question as a matter of law you couldn't say that we should win this lawsuit, but I don't think by any stretch of the imagination you could say, as a matter of law, there is no triable issue of fact and I do not feel that we should be put in a position now because of what has happened of going back and relying on the same union that we are suing here to handle our affairs again in this very matter.

Now, we could go back and be sent back to arbitrators indefinitely and never come to court and the company and the union would like nothing better, but under the law, the only reason for this offer being made is because we say the records, number one, should not have been lost, and number two, if they were lost then the union should have not necessarily found out about it earlier, but handled these grievances a lot better than they did and Mr. Jardin in particular with respect not only to the tongue in cheek handling of ours, but with respect to his apparently lackadaisical handling of the 1962 grievances.

Now, one other point I would like to make. The local may have the authority here if the International, - despite the International, the local union may have the authority to say when they want to go to arbitration and when they don't, but despite that, if they decide they want to go to arbitration, whether the boys upstairs think it has merit or not,

they should go to arbitration and fight.

THE COURT: I have read that arbitration proceeding and do you agree or disagree with Mr. Gottesman's comment that all through it that the union representative brought up each argument that he could think of in regard to the union's position there?

MR. SCOTT: He didn't bring up the right one, though, your Honor, that these people hadn't been paid for five years.

THE COURT: What was the right one?

MR. SCOTT: The right one was, your Honor, Mr. Arbitrator, four out of the five units here are not waiting to be paid. The company has been promising to pay us for five years and four out of the five production units that we depend on had, in fact, been paid. Where is our money. That was the point he should have been bringing up right along. At least three, I believe it was, out of the five units were paid completely in 1962 and then another one between then and November of '64, the production unit, and nothing at all to the plaintiffs.

THE COURT: The fact that others were paid or not paid - -

MR. SCOTT: The people we depend on.

THE COURT: You claim that that influenced the kind of, - how the scheme would be worked out for your people.

MR. SCOTT: The fact that these people were paid and then the records were lost certainly affects the people --

THE COURT: That has to do with computation of amount to be paid, doesn't it?

MR. SCOTT: The fact that the records were lost, sure, but what I am saying is that Jardin never mentioned to any arbitrator anytime along the way that the production people whose incentive retroactives we would get simply stated 67 per cent of, he never stated to the arbitrator that those people had been paid, never brought the subject up and he should have.

Secondly, he mishandled the 1962 production grievances to the point where they were forced, the union, to take less money than they thought the production people were entitled to and

that necessarily, mathematically, 67 per cent of that, whatever that loss would be would go to our people, would affect our people, and finally Ben Fischer himself, your Honor, is another reason why we are entitled to be here. Ben Fischer's deposition denying the truth of what he states in his memorandum setting forth to these people, representing to them how much money they are going to make under the plan that he was partly responsible for. That deposition, - in that deposition he denies any knowledge of the meaning of the very terminology that he puts in his memorandum and claims to be not expert at all in those fields, and these people are entitled to rely on those representations and that is one of the reasons for the grievance.

THE COURT: Mr. Scott, if I understand your argument here, you want me now to look into the former grievances about the direct workers, you claim that Jardin - -

MR. SCOTT: There is two of them, just tw[illegible]

them.

THE COURT: Just two, but is that a part of your lawsuit here?

MR. SCOTT: Sure it is, because you see, we only get paid two thirds of what the direct people get.

THE COURT: Are those grievances in the record before us now?

MR. SCOTT: Yes they are. Parts of them are. I don't know whether the transcipt of the hearing is, but I will hand it over to you.

THE COURT: Wait a minute. Mr. Gottesman refers - -

MR. SCOTT: You will see, your Honor, in Mr. Trost's - -

THE COURT: Wait a minute. This is grievance B-2137 and B-2236.

MR. SCOTT: That's right. You will see in Mr. Trost's supplemental affidavit an explanation of what happened to those grievances. He explains it a way again on the theory "Well, we didn't think they had any merit". That is in his supplemental affidavit and those

grievances definitely affect us because the only thing we get as indirect employees is a percentage of what the direct people get on theirs.

THE COURT: All right. I will listen to the argument here, not asssuming that this is part of the case, but how did the union fail to process the Grievances 2137 and 2236?

MR. SCOTT: They failed in that by mutual agreement between the parties, the company and the union, the company said in a meeting, and I don't have the exact dates and times, but the company said at a meeting "We will implement a retroactive payment to the hot mill and tandam people and if you, the union don't like it or aren't satisfied with it, you will let us know by July 15, 1961". The union said "Fine with us". July 15, 1961 came and went and nothing happened and then when the thing finally went to arbitration in November of '62, the business took place that I read to you from when I first got up, the arbitrator saying to

Mr. Jardin "Wait a minute, why didn't you say something before the deadline?" and him making excuses and finally saying, "I don't know why we didn't respond before July 15th". Now, as a result of that, the arbitrator denied those grievances and the plan that the company put into effect, the retroactive payment that the company put into effect for those direct people stood and the union against their wishes was saddled with that. Now, Mr. Trost says just the opposite in his affidavit. He says "Well, it is my recollection that we agreed that had no merit". Well, if it had no merit, the transcript of November '62, what Mr. Jardin is trying to say "Well, they should be entitled to come in anyway", doesn't indicate it, but in the transcript Mr. Jardin is very convincing that it has merit and they shouldn't be held to that July 15th deadline. I don't think you have that transcript before you and I would like you to have it. I have a copy, your

Honor.

THE COURT: Mr. Scott, I am not going to take any further affidavits.

MR. SCOTT: Okay.

THE COURT: Or exhibits on this motion.

MR. SCOTT: Fine, all right. It may be somewhere in there.

THE COURT: This is one of the first pieces of business that I had given to me for my consideration. It was an old case then. I mean to push it on to get it disposed of. Mr. Gottesman, before Mr. Scott goes further and so I can get this straight in my mind, - you know, I read bits of it and I feel I understand part of this thing and then I go on again to read something else and it is very difficult to get straight. What is the explanation that you have for all of these things Mr. Scott is talking about?

MR. GOTTESMAN: Let me take them, if I may, one at a time. I would say this as a general comment that all of them, and I will deal with each separately, - I am not

sure if anything Mr. Scott argues is so that we have dispute of fact because he points to certain facts which he says are very damaging. There is no dispute about.

THE COURT: He says that when they started off on this arbitration, that Jardin, he agreed with the arbitrator and he was wrong. I asked you specifically, I think, to answer that question, and you gave a general answer to it. What is the situation there? What is the position?

MR. GOTTESMAN: We are talking about, - that was the arbitration of this very grievance.

THE COURT: Right.

MR. GOTTESMAN: The indirect workers. Jardin is the, - the problem of the payment, the retroactive payment was not what the grievance was about; the grievance was about the scheme itself and so Jardin gets up and in the beginning he says "I want the arbitrator to know the problems of payment aren't before you. We have an agreement that whatever is

worked out on direct will be applied here", and then he says "The issues that are before you are the issues that go to the scheme itself". In other words, was this plan constructed properly.

THE COURT: Mr. Gottesman, it is 1:30. We have been here since before 10:00. Let us take a break and we will come back at 2:30 because I want to see if I can get this as clear as I can before you leave.

MR. SCOTT: Your Honor, one thing, I will call over, but I am supposed to pick a jury in County Court at 2:00 o'clock.

THE COURT: Will you tell them, please.

MR. SCOTT: Yes, I will.

MR. DICKINSON: Is there any possibility of our going on more quickly, say at 2:00, Judge? I have got something at 3:00.

THE COURT: Maybe we'll only be another half hour or maybe not even that, but we have been here a long time, so let us make it at 2:30.

(Recess taken at 1:30 p.m.)

* * * * * * * * * * *

PROCEEDINGS: April 6, 1973, 2:30 p.m.

APPEARANCES: As before noted.

THE COURT: As I understand it, Mr. Scott, you refer to the meeting, the remark made by Mr. Jardin, - this is the arbitration, November 18, 1964, at which Jardin said "In this case the units have paid off are not agreed to as yet. There are four or five units that have still got to be agreed to. It is my understanding that when and if they are agreed to that will reflect in the rate whatever they might get will reflect in this rate."

MR. SCOTT: That is one of the things I refer to, yes.

THE COURT: What about that, Mr. Gottesman?

MR. GOTTESMAN: Well, the fact, - I mean we start with this, the fact at that time was that of the five units, four of them had, in fact, been agreed to, and one was not and so Jardin has the arithmetic backwards, as it were, in explaining it to the arbitrator, but I think the context in which it arose has to be understood. You

have to understand what Mr. Scott is saying turned on this. Mr. Scott is saying that if Jardin had accurately reported to the arbitrator that four of the five have been agreed to but that even so the indirect workers are not yet receiving their retroactive payments, that the arbitrator might well have said "Well, by golly, go ahead, Mr. Company, and pay them", and if the arbitrator had said them at that time the records weren't yet lost so that it would have been possible for the retroactive payments to have been computed at that time. That as I understand it is the chain that Mr. Scott suggests would follow had Jardin accurately reported it and the link in that chain that doesn't work is the assumption that if Jardin had accurately reported it the arbitrator would have said "Go ahead and pay it", and this is why. This was an arbitration on the original grievance which challenged the scheme. It challenged the plan as having been properly constructed. The

issues before the arbitrator were those specified in that grievance, that it provide equitable compensation should these workers be direct or indirect. Those were the issues, whether the plan was properly constructed. Jardin, when he got up, simply wanted to tell the arbitrator. He told him inaccurately what the facts were, but he wanted to tell him "Look, we do have an agreement that as the directs are worked out any impact of those will be received by the indirect. That is not what this grievance is about. This grievance is about the plan itself". Now, he was right that there was such an agreement. There is such an agreement. There is no dispute about that, but it is true that there was only one unit that hadn't been agreed to at that time rather than four or five, but it wouldn't have made any difference in that arbitration. If Jardin had told the arbitrator absolutely precisely correct what the facts are, namely, we have four units agreed to and one that

does not.

THE COURT: Does it have anything to do with the plan or did it just have to do with payment?

MR. GOTTESMAN: Just payment.

THE COURT: That is my problem. What does this have to do with the plan which was the grievance?

MR. SCOTT: The grievance, first of all, the issues are not limited as Mr. Gottesman says they are.

THE COURT: Well, we have two grievances.

MR. SCOTT: Right. As I say, as I read to you before in the arbitrator's decision he made in the case finally dismissing it, one of the paragraphs in the decision says, and he breaks the grievance down in parts, he says the grievance relating to the level of earnings derived from the various component incentives was resolved, so the issues of the grievance are not solely whether the plan itself is legal or illegal, as the company and as the union both are stating. If you read the grievance, if you read the

actual grievance signed by the workers --

THE COURT: Mr. Scott, what does payment have to do with this? Let us say some people were paid and other people were not paid. What in the world does that have to do with this grievance?

MR. SCOTT: The language of the grievance specifically asks for retroactive payment as one of the things that is being grieved. It doesn't only say "We don't like the way you set up this plan". It doesn't only say that. It says "You are not paying us what we have coming and we want to be paid." That is one of the claims.

THE COURT: Let us assume that is correct, but let us say that other people in other plans were not paid; how can that affect this particular grievance?

MR. SCOTT: Now I see what you want. I thought you understood this. The grievance B3139 and B3141 which is specifically the grievances of the indirect employees, they are only entitled to grieve for things that the direct people would have

gotten, a portion of the direct people's wages, incentive wages. In other words, the contract provides that we as indirect workers only get sixty-seven per cent of the incentive awarded to direct workers so that as I pointed out in my memorandum as each new direct incentive plan is put into effect from 1959 to 1960, as each one was put into effect, the direct people filed grievances saying the plan is unfair, we want retroactives. As a matter of mathematics my people are entitled to two-thirds of that because they get paid off of those retroactive payments, so what Jardin was saying in that statement --

THE COURT: They don't get paid off of other people's payments. Their payments would eventually depend upon how the other plans work.

MR. SCOTT: Their payments would eventually depend upon what in fact was paid to those other workers, to those direct workers.

THE COURT: It would depend upon the computations, right?

MR. SCOTT: Well, a computation would have to be made based on what was paid retroactively to the direct workers and what Jardin is saying in that testimony to the arbitrator is "Well, your Honor, four or five of the direct contributing units have not yet been paid or agreed to and when they are, these people will be", that is what he is saying, and what I'm saying is he knew at the time at least four of those units had not only been agreed to, the direct units, but paid off so that why shouldn't we have gotten our computation made?

THE COURT: This is all in the record anyway, isn't it, Mr. Scott?

MR. SCOTT: Right.

THE COURT: This is all available to the arbitrator.

MR. SCOTT: But the question I think was why because the direct people didn't get paid, why does that affect us?

THE COURT: Let us go another step. Mr. Gottesman says "Yes", he got it backwards, he did make a mistake in his statement

and then the discussion goes on for some time. Furthermore, the arbitrator had before him all the information upon which to make a decision. If in oral argument here one of you make a mistake in representing to me what the facts are, this would be in any case, or if any trial a witness misstates a fact and there are other exhibits which would show that he was in error in that statement, the problem before me is how does that indicate conduct on the part of the union which would entitle the plaintiffs to relief.

MR. SCOTT: First of all, there were no other exhibits before the arbitrator which would show him that four out of five direct production units had, in fact, been paid. He had to rely on what was told to him by the union representative. Now, it is our position that that union representative had an obligation to tell him at that time the true state of facts, that four out of the five contributing direct plans had been paid off two years

before and that the plaintiffs involved here up to that point had received nothing. Now, that taken with, as an isolated instance, an isolated incident, maybe you could say the guy made a mistake, but that taken with the mishandling of two of the important direct production grievances, that we would get paid off of, taken with that in 1962, I think, is enough.

THE COURT: Mr. Scott, I will hear you later on on some other things, but Mr. Gottesman, do you have some comments?

MR. GOTTESMAN: Just one more brief comment about this one and then I would like to talk about the Ben Fischer incident which is another point Mr. Scott relies on. Those are the two I would like to address myself on.

First of all, on this one I think the important point to remember about this statement of these units is that the company had decided it was going to wait until all five directs were settled so that it only had to compute the [illegible]o-

active for the indirects one time rather than five times. It made that decision early in the game. It was, as it settled each direct incentive it was prospectively changing the indirecting sentence each time to reflect the change in the direct, but it was saving up the day when it would sit down and compute what the retroactivity was because it didn't want to have to do it five times and if it did it as each direct got settled, it would have to do it five times, so that Jardin is appearing before the umpire in this case at a time when the parties have reached agreement that the company will adjust the indirects and pay the retroactive by the time the fifth and final one is done. That has not happened yet and all he is saying, Mr. Scott seizes on a paragraph which is early in Jardin's testimony which has nothing to do with the rest of the arbitration. All Jardin is trying to tell the arbitrator is you don't have to worry about this problem, this one we

have agreed. We have agreed that the company acknowledges that it is obligated and as soon as they are all done, it is going to pay the retroactive.

Now, let me tell you what the issues in this case really are, and then he goes on to discuss the issues as they relate to the propriety of the plan itself and the statement is there and it isn't accurate, but there is nothing that could have happened in this arbitration, even if Jardin had stated the correct set of facts. If he had said to the arbitrator all but one is settled, the company hasn't paid the retroactive yet because they are waiting until the last one is settled and then they are going to pay it all in a lump sum, the arbitrator would have said "Fine. Now tell me what the issues in this case are". I mean there is nothing that would have happened there or would have changed if Jardin had stated it accurately because that wasn't the issue being arbitrated. Now, unless the Court has a

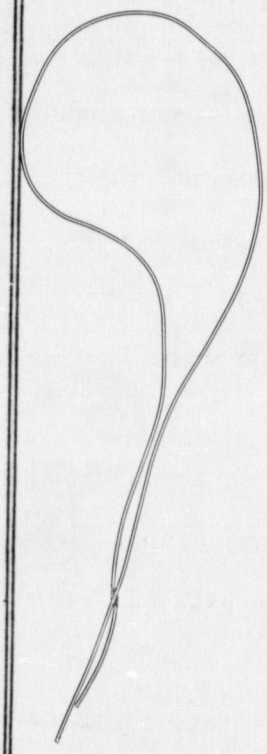
further question about that, I would like to turn to the Ben Fischer memo which is the other item that Mr. Scott has made a great deal of. Mr. Scott accuses Mr. Fischer of denying having written it and denying having heard the words in it. Actually I think the reading of the deposition will show this memo was written in 1960.

THE COURT: That exhibit is --

MR. GOTTESMAN: That is Exhibit G to Mr. Scott's affidavit, the next to the last one.

THE COURT: I have it.

MR. GOTTESMAN: Okay. When Mr. Fischer's deposition was taken, he was shown this memo by Mr. Scott. It was now more than a decade after the apparent date of the memo and the memo of course is captioned a report by Ben Fischer, so there is a reasonable inference that he has written it and Mr. Scott says "You wrote this, didn't you", and he says "Gee, I don't remember it. It is conceivable I wrote it. It is a long, long time ago and I don't recognize it, and he also pointed to one



phrase in it and said "This leads me to wonder if I wrote it", and he recited a certain phrase and he said that phrase "doesn't mean anything to me and it is unlikely I would have used that phrase," and that is why you heard from Mr. Scott earlier that Mr. Fischer even denied the words, but Mr. Fischer did not in his deposition assert that he didn't write it. He said he didn't remember it, he might very well have, or somebody in his department might have written it on his behalf and under his name. He was not disclaiming it and the union does not disclaim this memo. What this memo was was a document written immediately after the settlement of negotiations in which the union reported to the membership what it thought it had achieved in the 1960 negotiations and one of the things it told the membership it thought it had achieved in those negotiations was that there was to be a second test applied to these 1956 incentive changes, and that appeared on Page 4 of the memo under the heading

"Conversions".

If the Court has that, the second paragraph of the conversion says the January 4, 1960 memo brought about another test to be applied to all incentives based on standard hourly wage rate and that new test is, and then it goes on for another paragraph to describe the test.

Now, Mr. Fischer in his deposition was asked by Mr. Scott "Now, didn't you say that", and Mr. Fischer said "I don't remember actually saying it, but I do remember that that was my state of mind at that time", he said, and "We may very well have reported that to the membership". He said "There was only one problem", which is this issue came up before the arbitrator thereafter and the arbitrator said we were misinterpreting the agreement, that it did not apply a second test and that the test under the 1956 agreement remained one test as he had previously said.

Now, Mr. Fischer's deposition is

confirmed by what the arbitrator said in the arbitration of this very case and I can show the Court that, the transcript of the hearing of this case, which I believe is Appendix C to Mr. Scott's affidavit, which runs for some considerable length, but at one page of that, - the pages are numbered in the upper right-hand corner, on Page 158 it begins at the bottom of 157 of the transcript, Mr. Jardin is making the argument to the arbitrator which is essentially the argument that the plaintiffs made when they first brought this lawsuit, namely that under the 1960 agreement they were entitled to have some equitable computation, the fact that they were losing money, and the bottom of Page 157, the umpire says, in effect reminds Mr. Jardin "Remember those decisions I wrote in '58 and '59 about this agreement", and Mr. Jardin says at the top of the next page "Yes, you were the arbitrator too, I remember".

THE COURT: I am sorry. At the bottom of

Page 158? "You remember those cases down in New York".

MR. GOTTESMAN: That is right, and then Mr. Jardin says "Yes, you were the arbitrator too, I remember", and then the umpire says "That is right, and as I held then" and remember now he is writing in 1964 and he is writing in the hearing of this very case and "As I told them and as the May 25th agreement clearly provides, when you have just a simple substitution of a standard hourly wage rate based incentive for one of the old incentives what the parties have provided in the May 25th agreement is just this one standard that the company has to meet and that is the past representative test period and that is not the minimum guarantee".

Now, what he is saying when he says that is not the minimum guarantee is he is saying Mr. Fischer was wrong in that memo of 1960 when he says there is now a second test which is a minimum guarantee, and Mr. Fischer in his deposition when shown this memo said,

"Look, I thought when we signed that agreement we got a second test." But the arbitrator then came down with decisions saying that that was not correct, that the new 1960 agreement which did put in this minimum guarantee test did not apply to the incentive changes under the 1956 agreement and he said "Look, this has happened before in negotiations. We signed an agreement. We think it means one thing. We reported that to our membership but we don't always get arbitrators to agree with us on our interpretations", and that is what happened in this case. I wrote a memo and you are right, my memo said one thing, but that happens not to be the way these things turned out. Now, it happens that even if things had turned out as Mr. Fischer said, it wouldn't have given the plaintiffs in this case a single penny and that becomes clear when you look at Page 5 of Mr. Fischer's memo, back again in Appendix G, and on Page 5 he has just described the new and second test which

he says has been instituted, and then in the first full paragraph on the top of Page 5 he says, - does the Court have it?

THE COURT: Yes.

MR. GOTTESMAN: The first full paragraph beginning "This adjustment," and then he says we got this new benefit and then he says "This adjustment and incentive will result in a wage raise effective March 13 for those on incentives based on the standard hourly rate unless they have an incentive adjustment", which mind you, all these people have, in which event the rate will go up but the incentive adjustment will be reduced by the same amount. For these employees the average earnings should remain the same, and then he goes on two paragraphs later and says the same thing again, specifically with reference to indirect workers. Here too, however, any incentive adjustment in effect will be reduced by the amount of the increase in rate, so what Mr. Fischer wound up saying was in this report, he was saying "I think there is now a second

standard". He turned out to be wrong, but even the second standard that he thought there now was by his own description would have resulted in a complete wash for people who have incentive adjustment because the incentive would go up, the adjustment would come down and the total would remain the same, so that either way there is nothing in this report that would give rise to a finding that the union did anything wrong. If we are going to be held every-time our negotiators report what they think we won in negotiations and it turns out that an arbitrator says "No", we are going to be in real trouble.

THE COURT: Mr. Scott, if we had a trial what testimony, what witnesses would you put on the stand?

MR. SCOTT: Well, probably everybody I could examine that I could lay my hands on.

THE COURT: We have the depositions. What additional testimony would they bring out and on what issue? We have the record of the arbitrations. We have all

the affidavits. You agree in principle that as far as Mr. Evenden and Mr. Williamson's explanation of the plan, you are not going to go back into all of how this plan was worked out, right? As far as the history of the grievances, what was said by Mr. Jardin and the others, Mr. Moore, the arbitrator, what the arbitrator's decision was, that is all --

MR. SCOTT: I am not going to dispute any of that.

THE COURT: Just what would your witnesses testify to?

MR. SCOTT: The witnesses --

THE COURT: Or about?

MR. SCOTT: The witnesses would be some of the people that despite the fact we have taken depositions, I would like to have some of these people in court if I can get them in court so there would be some of the people we have taken depositions of. There would be others that would be the plaintiffs themselves, some of whom had been in the plan for thirty years and they would get on the stand and they

would testify to noticeable, observable losses in pay immediately after the institution of the rate and we would --

THE COURT: On that score, isn't that in the record now?

MR. SCOTT: In what record?

THE COURT: Before the Court.

MR. SCOTT: In what way?

THE COURT: As far as loss of pay.

MR. SCOTT: Right, but the point is, your Honor, nobody, including the company, can calculate now precisely what these people have coming.

THE COURT: Let us assume that Mr. Miller, one of the plaintiffs, a fictitious name, let us assume that he did, in fact, lose pay, he has a lower pay, weekly take-home pay. How does that indicate lack of fair representation on the part of the union?

MR. SCOTT: That in itself, the fact that he is making less money does not indicate lack of fair representation on the part of the union. All of the other things I think you have before you concerning

the representation of these people makes a question.

THE COURT: I see. You would say that that is part of the mosaic here to give us the whole picture.

MR. SCOTT: That is right.

THE COURT: What other testimony would you have?

MR. SCOTT: Well, we would have the plaintiffs' testimony and the union personnel's testimony and the company's testimony.

THE COURT: Again, Mr. Scott, I am going to keep pressing you. They have one point they are going to testify about. You claim they would testify about loss of pay. What else would they testify about?

MR. SCOTT: Well, they would testify as far as people who were involved in this, in the handling of these grievances, they would testify to how they were handled.

THE COURT: When you say "people", you mean --

MR. SCOTT: Union personnel.

THE COURT: Union people, or individual plaintiffs who had conversations with union people?

MR. SCOTT: I mean definitely union people and possibly individual plaintiffs that had

something to do with it. I will tell you right now, Judge, I am not in a position now to go down a list of witnesses that I can tell you precisely what everybody is going to say because I haven't come today prepared to do that.

THE COURT: I know that would be very difficult. We have the affidavits of Mr. Thiess and the other union representative, Mr. Trost. Let us take those men. Would you want to have them put on the record anything in addition to what they have already said in their affidavits?

MR. SCOTT: Well, I might wish to cross examine them on some of those things, yes. All of those union and company personnel, I think if they testify I would be entitled to cross examine them on some of those conclusions they have come to.

THE COURT: You have the affidavit of Trost and Thiess and what questions, where would you want to cross examine them?

MR. SCOTT: I would like to cross examine, first of all, if I have the opportunity, Mr. Trost on his supplementary affidavit

in which he gives the reasons for the outcome of the production grievances in his supplementary affidavit. That would be very important, where he said the union had no interest in pressing those grievances. He should be cross examined on that. That is one point in his supplementary affidavit where he indicates that the --

THE COURT: Did you take his deposition?

MR. SCOTT: No, I didn't take his deposition, I don't think. No, we didn't take his deposition.

MR. GOTTESMAN: It was scheduled but not taken.

MR. SCOTT: He had a heart attack or something and we postponed it, and things like this, your Honor, first instance, you have an affidavit before you from Mr. Thiess, the original affidavit on Page 13. Now, he is, - at the time he ecites in his affidavit that he was the chairman of the wage rate inequity committee having to do with the company and the union. He makes a statement concerning the test period. He says "To the best of my

knowledge I have never been made aware of any information establishing that the period would have been abnormal". Now, I made a note here myself who did he expect to inform of this. If he is the chairman of the union committee, it is part of his job to know these things.

THE COURT: On that we have the analysis now here before us offered by Mr. Dickinson through Mr. Williamson. Do you have any information from the record we have now that would indicate that the test period selected, number one, was unfavorable to your clients, and number two, even if it was, where there was failure of the union to check this out.

MR. SCOTT: Well, let me say this, the test period that was used, and I hope I can explain this to you or get it across, anyway, the test period that was used was a couple of weeks before a strike and eleven weeks after a strike, first of all, and the contract requires, the contract that they agreed to, the union and the company, requires that unless

there are special circumstances it be the period three months before the institution of the rate. Now, they all say everyone knows that is impossible. Well, our position is why did they agree to it if it was impossible, first of all. If they thought when they made this agreement that they could not comply or they knew they couldn't comply, let us put it that way, they would not have made such an agreement, so I don't know at all that everybody knows it is impossible. They agreed to it. All the experts agreed that that is the way they would do it, but that aside from that, the actual period they did use, and if you look at the affidavit of Mr. Williamson on Page 6, I think it is Page 6.

THE COURT: This is the first --

MR. SCOTT: Let us see, supplemental, I guess. This is the second --

THE COURT: All right.

MR. SCOTT: If you look at that affidavit on Page 6 you will see around the center of the page Mr. Williamson admits in that

affidavit or makes the statement that the production during the test period was less than it was during the period that would have been required under the contract, the three-month period before the institution of the rate. Okay. Now --

THE COURT: This is where he said the weighted average ton per hour was 307 tons for the period.

MR. SCOTT: Based on these figures production during the representative test period was comparable to but somewhat less than the production during the months immediately preceding the institution of the plan which, according to the contract, would have been the proper test period to use.

THE COURT: As I understand it, Mr. Dickinson and Mr. Gottesman, tell me if I am wrong, - that even if it was a little bit less, the IA would take care of that?

MR. SCOTT: No. Let me just finish my explanation. At Page 140 and 141 of the exhibit under Cummings affidavit you will see a statement that, - by the company, -

that even though production was lower in the actual test period, the earnings in fact under the new plan, the earnings calculated out, turned out to be higher than they would have been in the contractual period of three months before the institution of the rate.

Now, here is what I am getting at. You have two incentive systems here, Judge. You have one based on tonnage output. That is the old system and you have a new system which is more or less of a time study operation. You get so many minutes credit for everytime you do something, everytime you perform a function and they label those standard minutes. That is the new system. That is how they implement the thing. Now, under the rules of the May 25th agreement when they go back, as they are required to and use this test period and make a comparison to determine what the difference between the rates is, if they apply this time study method to the period they did use, the actual test period they [illegible],

when they apply that they will get a certain figure and then, - a certain rate, and then by applying the old tonnage system they will get another figure. They substract the new from the old and that is the incentive adjustment. In other words, if there is a difference between the new and the old, they get an incentive adjustment and that is the IA that they add to everybody's wages.

Now, the production, the actual production by Williamson's admission was lower in the test period than it was in the three months before they instituted the new rate. This lower production, we say, would result in a lower calculation under the old production method, bringing the two rates from the new to the old that much closer together. The new incentive system would be brought that much closer to the old and smaller incentive adjustment would result. Now, if they had used the proper period of three months before the incentive went into effect, as the contract says, they

had a higher production in that period, by Williamson's admission. They had lower earnings, lower earnings under the new plan, according to Page 141 of the notes I referred you to; a higher production would give them a higher rate under the old plan, the tonnage system, lower earnings would give them necessarily, because of the lower earnings figure, would put it further away from that higher production under the old system, making the IA figure, making the incentive adjustment larger and that incentive adjustment is a fixed thing. It goes on and on and on. It can change but it doesn't fluctuate with earnings, doesn't fluctuate with production. Once it is set, that is added to your base pay each and every turn, each and every shift, and with certain exceptions, it can be modified. That's why we say that instead of using the proper period, they used an improper period. They took it upon themselves arbitrarily to use an improper period. It doesn't say in the

contract they can do that, and they did it anyway and it was one of the issues that was withdrawn and there is no reason before you. There is nothing in the record anywhere to show a good reason why it was withdrawn other than the blanket statement in our opinion the period was fair. We claim it wasn't.

THE COURT: Mr. Gottesman, anything else you want to say?

MR. GOTTESMAN: I think not, your Honor. I think on this point really the company, since they are the ones with all the figures and computations are in a better position to respond than we are.

THE COURT: Isn't that part of Mr. Scott's argument, though, that the union representative had an obligation to look over the company's shoulder and if in fact the test period was wrong to complain.

MR. GOTTESMAN: I agree with that. I didn't mean to suggest otherwise. If you look at the affidavit of Donald Cummings attached to it are the minutes of the third step meeting on both of these two grievances,

at which the company laid out for the union its effort to demonstrate to the union that indeed the period that was actually used was a pretty good period for the purpose of yielding what the union would want and the Trost, the original Trost affidavit recites that the union after seeing these figures decided as a matter of strategy not that this was necessarily the only right test period within the meaning of the contract, but as a matter of strategy looking at these figures, it was a pretty good period and we better not play around with it and we got a very big IA out of this period, and should we push the company for another one, we may wind up being right and we may wind up with less. The thing I didn't want to undertake to do because I don't understand it well enough, is to tell you how the IA's work up and down, depending on the old plan and the new, but I don't want to suggest that this isn't something the union went through at the time.

Mr. Trost's affidavit describes in detail how the union faced this question of whether or not to tackle the test period and concluded as a matter of the best interest of the employees that it had worked out very nicely, thank you, and we better not challenge it lest we win and wind up with a less desirable solution.

THE COURT: Is there anything else? I have read these materials and I have listened carefully and I have tried to understand it and get to the essential points.

MR. DICKINSON: May I say one word, Judge, on which others have referred to in part.

THE COURT: Yes.

MR. DICKINSON: On the question as to the dropping of earnings after the test period, Judge, Mr. Gottesman read the very significant part of that arbitrator's hearing, the hearing itself, not his decision, when he, and this is really the nub of what we are talking about in this lawsuit, I am certain. I can understand that individuals would think that in a new

and adjusted incentive plan there necessary were going to flow some increased earnings by way of incentives and this whole business of the Fischer memorandum goes to aspirations rather than reality, and the arbitrator spoke of 59 and said "No test period is the sole test", and Mr. Gottesman read to you the colloquy between Jardin and the umpire in which the umpire said "Test period is the sole test. I have no choice". This is not the umpire saying "These matters have been settled and I can't resolve them". This is the umpire saying to Jardin on the main issue, the really only issue "You are discontented with your earnings. We are sorry. The fact is I cannot touch it, there is nothing I can touch," because the parties have contracted, and there is an extra paragraph here that points it out exactly. He says, "If the incentive is so engineered --"

THE COURT: Excuse me. You are reading where?

MR. DICKINSON: I am reading from that same page 157, was it?

MR. GOTTESMAN: 158, Appendix C.

THE COURT: Before the arbitrator?

MR. DICKINSON: Yes. It is attached to Scott's affidavit and it is G, is it?

MR. GOTTESMAN: C.

THE COURT: Appendix C?

MR. GOTTESMAN: C.

THE COURT: This is at 157?

MR. DICKINSON: Yes, 158, I believe he said. I don't have the page number.

MR. GOTTESMAN: 158.

THE COURT: All right.

MR. DICKINSON: In the upper part of the page he reaffirms that is the May 25th agreement and that is the sole test and if you are disappointed in your earnings, I can't help you on that. That is not a matter for arbitration. Dropping on down, however, he goes on to explain if the incentive is so engineered that applying it with adjustments to the proper production that was made in the past representative test period during that period would have to that production, come out with equal earnings, the incentive

on the parties having written this agreement is okay as long as it meets the test, and that, of course, is what the incentive adjustment does, is meet the test.

The next paragraph, though, is interesting, "That does not mean that if the production record later on was lower the earnings won't drop below the past records in the test period or if they go higher, they will go above it, but the test the parties set up was that for the particular production experience for that particular three months. If the incentive is adjusted, meets those earnings, then it is okay, and I am powerless under the May 25th agreement to do anything about it".

Now, the real heart of it is that these people are disappointed and how that plan worked after the event, I understand that, and can fully appreciate that, but my point is the test period is the sole issue which we have in front of us and the question on that is was the

union properly giving judgment to the question of what test period and it seems that on that point Mr. Scott has in his answers to your interrogatory labored at length the assertion that the union had nothing in front of it. The union had no figures, he contends. Well, I am here to say that I couldn't give you the entire record, as I said in my answer, the entire record of the agreement. I gave you a chronology and I gave you one set of minutes in the May 1961 hearing in which one set of figures went to them at a time when the test period was being considered and it showed almost identical earnings during the two periods, 3.261 to 3.28 something; very, very close.

Now, when Mr. Scott urges that even this small amount of money is something that would make a difference in a test period I must remind him that you don't get it all because the IA is going to take care of it and if you look at the attachments to the interrogatories, to the answers to the interrogatories of the

company, you will find a seventeen-cent incentive adjustment here and you will likewise find that the changes in those direct plans like the tandem mill where they didn't go on, they didn't file in time, the changes in those plans when they were changes involved payments of mills, ten mills, a penny, two pennies. Well, even if sixty-seven per cent of that were to be carried through the arbitrator and everybody agrees that if you increase thos incentive earnings you must immediately reduce the IA, so I submit to you that the so-called failure to carry out arbitration in the direct units, tandem and hot mill, in which he says that Jardin didn't do the job of carrying on, that those, - even if they had succeeded, could not have produced any change in the earnings of these employees because the IA is ten times the amount of the adjustment that was made.

THE COURT: Anything else?

MR. SCOTT: Nothing else from here.

THE COURT: Thank you very much. I will consider the motions and I will have a decision to you as soon as I possibly can.

MR. SCOTT: Thank you, your Honor.

THE COURT: Thank you all very much.

(Proceedings herein concluded at 3:20 p.m.)

I hereby certify that the foregoing is a true and accurate transcription of my stenographic notes in the above-entitled matter.

Official Reporter
U.S. District Court

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AFFIDAVIT OF SERVICE BY MAIL

State of New York)
County of Genesee) ss.:
City of Batavia)

RE: Lawrence Ralph
v
The Bethlehem Steel Corp. et al
Docket No. 74-1658

I, Roger J. Grazioplene being duly sworn, say: I am over eighteen years of age and an employee of the Batavia Times Publishing Company, Batavia, New York.

On the 31 day of July, 1974 I mailed 2 copies of a printed Appendix and ~~x~~ Brief the above case, in a sealed, postpaid wrapper, to: each of the following:

Hodgson, Russ, Andrews, Woods & Goodyear, Esqs.
1800 One M & T Plaza
Buffalo, New York 14203
ATTENTION: Hugh McM. Russ

Tiernan, Krug & Goldinho, Esqs.
300 Edwards Building
155 Franklin Street
Buffalo, New York 14202
ATTENTION: Thomas E. Krug

at the First Class Post Office in Batavia, New York. The package was mailed Special Delivery at about 4:00 P.M. on said date at the request of:

William David Scott, Esq.
605 Brisbane Building, Buffalo, New York 14203

Roger J. Grazioplene

Sworn to before me this
31 day of July, 1974

Monica Shaw

MONICA SHAW
NOTARY PUBLIC, State of N.Y., Genesee County
My Commission Expires March 30, 19..7